

trator, and shall receive compensation at the rate provided by law for other Associate Administrators of the Small Business Administration.

(Pub. L. 85-699, title II, § 201, Aug. 21, 1958, 72 Stat. 690; Pub. L. 89-117, title III, § 316(b), Aug. 10, 1965, 79 Stat. 484; Pub. L. 89-779, § 2, Nov. 6, 1966, 80 Stat. 1359.)

AMENDMENTS

1966—Pub. L. 89-779 substituted “Associated Administrator” for “Deputy Administrator” as the head of the Small Business Investment Division of the Small Business Administration, substituted the rate provided by law for other Associate Administrators of the Small Business Administration for the rate provided by law for the other Deputy Administrators of the Small Business Administration as the standard of compensation for the head of the Small Business Investment Division, and struck out provisions spelling out the proper exercise of the powers conferred on the Administration and on the Administrator through the Small Business Investment Division and the Division head. See section 687(f) of this title.

1965—Pub. L. 89-117 provided that the powers conferred by subchapters IV-A and V of this chapter shall be exercised through such divisions, sections, or other personnel as the Administrator in his discretion determines.

§ 672. Repealed. Pub. L. 87-341, § 11(h)(1), Oct. 3, 1961, 75 Stat. 757

Section, Pub. L. 85-699, title II, § 202(b), Aug. 21, 1958, 72 Stat. 691, authorized appropriations for business expenses.

SUBCHAPTER III—INVESTMENT DIVISION PROGRAMS

PART A—SMALL BUSINESS INVESTMENT COMPANIES

§ 681. Organization

(a) Incorporation and charter under State law, period of succession; area of operations

A small business investment company shall be an incorporated body, a limited liability company, or a limited partnership organized and chartered or otherwise existing under State law solely for the purpose of performing the functions and conducting the activities contemplated under this subchapter, which, if incorporated, has succession for a period of not less than thirty years unless sooner dissolved by its shareholders, and if a limited partnership, has succession for a period of not less than ten years, and possesses the powers reasonably necessary to perform such functions and conduct such activities. The area in which the company is to conduct its operations, and the establishment of branch offices or agencies (if authorized by the articles), shall be subject to the approval of the Administration.

(b) Articles of incorporation; approval

The articles of any small business investment company shall specify in general terms the objects for which the company is formed, the name assumed by such company, the area or areas in which its operations are to be carried on, the place where its principal office is to be located, and the amount and classes of its shares of capital stock. Such articles may contain any other provisions not inconsistent with this chapter

that the company may see fit to adopt for the regulation of its business and the conduct of its affairs. Such articles and any amendments thereto adopted from time to time shall be subject to the approval of the Administration.

(c) Issuance of license

(1) Submission of application

Each applicant for a license to operate as a small business investment company under this chapter shall submit to the Administrator an application, in a form and including such documentation as may be prescribed by the Administrator.

(2) Procedures

(A) Status

Not later than 90 days after the initial receipt by the Administrator of an application under this subsection, the Administrator shall provide the applicant with a written report detailing the status of the application and any requirements remaining for completion of the application.

(B) Approval or disapproval

Within a reasonable time after receiving a completed application submitted in accordance with this subsection and in accordance with such requirements as the Administrator may prescribe by regulation, the Administrator shall—

- (i) approve the application and issue a license for such operation to the applicant if the requirements of this section are satisfied; or
- (ii) disapprove the application and notify the applicant in writing of the disapproval.

(3) Matters considered

In reviewing and processing any application under this subsection, the Administrator—

- (A) shall determine whether—
 - (i) the applicant meets the requirements of subsections (a) and (c) of section 682 of this title; and
 - (ii) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this chapter;
- (B) shall take into consideration—
 - (i) the need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business;
 - (ii) the general business reputation of the owners and management of the applicant; and
 - (iii) the probability of successful operations of the applicant, including adequate profitability and financial soundness; and
- (C) shall not take into consideration any projected shortage or unavailability of leverage.

(4) Exception

(A) In general

Notwithstanding any other provision of this chapter, the Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good

cause, approve an application and issue a license under this subsection with respect to any applicant that—

- (i) has private capital of not less than \$3,000,000;
- (ii) would otherwise be issued a license under this subsection, except that the applicant does not satisfy the requirements of section 682(a) of this title; and
- (iii) has a viable business plan reasonably projecting profitable operations and a reasonable timetable for achieving a level of private capital that satisfies the requirements of section 682(a) of this title.

(B) Leverage

An applicant licensed pursuant to the exception provided in this paragraph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 682(a) of this title, unless the applicant—

- (i) files an application for a license not later than 180 days after December 2, 1997;
- (ii) is located in a State that is not served by a licensee; and
- (iii) agrees to be limited to 1 tier of leverage available under section 682(b) of this title, until the applicant meets the requirements of section 682(a) of this title.

(e)¹ Fees

(1) In general

The Administration may prescribe fees to be paid by each applicant for a license to operate as a small business investment company under this chapter.

(2) Use of amounts

Fees collected under this subsection—

- (A) shall be deposited in the account for salaries and expenses of the Administration; and
- (B) are authorized to be appropriated solely to cover the costs of licensing examinations.

(Pub. L. 85-699, title III, §301, Aug. 21, 1958, 72 Stat. 691; Pub. L. 86-502, §4, June 11, 1960, 74 Stat. 196; Pub. L. 87-341, §11(a), (b), Oct. 3, 1961, 75 Stat. 756; Pub. L. 90-104, title II, §202, Oct. 11, 1967, 81 Stat. 269; Pub. L. 92-595, §2(b), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94-305, title I, §106(b)-(d), June 4, 1976, 90 Stat. 666; Pub. L. 95-507, title I, §104, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 100-590, title I, §105, Nov. 3, 1988, 102 Stat. 2993; Pub. L. 104-208, div. D, title II, §208(b)(1)-(3)(A), Sept. 30, 1996, 110 Stat. 3009-741, 3009-742; Pub. L. 105-135, title II, §§212, 214, Dec. 2, 1997, 111 Stat. 2601.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsecs. (b), (c), and (e), see References in Text note set out under section 661 of this title.

AMENDMENTS

1997—Subsec. (c)(4)(B). Pub. L. 105-135, §212, amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “An applicant licensed pursuant to the exception provided in this para-

graph shall not be eligible to receive leverage as a licensee until the applicant satisfies the requirements of section 682(a) of this title.”

Subsec. (e). Pub. L. 105-135, §214, added subsec. (e).

1996—Subsec. (a). Pub. L. 104-208, §208(b)(1), substituted “body, a limited liability company, or” for “body or” in first sentence.

Subsec. (c). Pub. L. 104-208, §208(b)(2), inserted heading and amended text of subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The articles and amendments thereto shall be forwarded to the Administration for consideration and approval or disapproval. In determining whether to approve such a company’s articles and permit it to operate under the provisions of this chapter, the Administration shall give due regard, among other things, to the need and availability for the financing of small business concerns in the geographic area in which the proposed company is to commence business, the general business reputation and character of the proposed owners and management of the company, and the probability of successful operations of such company including adequate profitability and financial soundness. After consideration of all relevant factors, if it approves the company’s articles, the Administration may in its discretion approve the company to operate under the provisions of this chapter and issue the company a license for such operation.”

Subsec. (d). Pub. L. 104-208, §208(b)(3)(A), struck out subsec. (d) which read as follows: “Notwithstanding any other provision of this chapter, a small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages may be organized and chartered under State business or nonprofit corporation statutes, or formed as a limited partnership, and may be licensed by the Administration to operate under the provisions of this chapter.”

1988—Subsec. (a). Pub. L. 100-590 substituted “, if incorporated, has succession for a period of not less than thirty years unless sooner dissolved by its shareholders, and if a limited partnership, has succession for a period of not less than ten years,” for “has succession for a period of not less than thirty years unless sooner dissolved by its shareholders or partners”.

1978—Subsec. (d). Pub. L. 95-507 authorized small business investment companies to form as limited partnerships.

1976—Subsec. (a). Pub. L. 94-305, §106(b), inserted reference to limited partnership and reference to partners, struck out “of incorporation” after “by the articles”, and inserted “or otherwise existing” after “chartered”.

Subsec. (b). Pub. L. 94-305, §106(c), struck out “of incorporation” after “The articles”.

Subsec. (c). Pub. L. 94-305, §106(d), struck out “of incorporation” after “articles” wherever appearing.

1972—Subsec. (d). Pub. L. 92-595 added subsec. (d).

1967—Subsec. (c). Pub. L. 90-104 provided for consideration of availability of financing, the geographic area, the business reputation, ownership factor, and probability of successful operations of company including adequate profitability and financial soundness and eliminated from consideration the number of such companies previously organized in the United States and the volume of their operations.

1961—Subsec. (a). Pub. L. 87-341, §11(a), provided that small business investment companies shall be incorporated, organized and chartered under State law, with a minimum succession period of thirty years unless sooner dissolved by its activities and functions, its area of operation shall be subject to the Administration’s approval, and deleted provisions setting the minimum number of incorporators at 10, no company shall be chartered by the Administration unless it determined that none could be chartered under the laws of the State and operate in accordance with this chapter, and

¹ So in original. No subsec. (d) has been enacted.

that no such company shall be chartered by the Administration under this section after June 30, 1961.

Subsec. (c). Pub. L. 87-341, §11(b)(1), (2), substituted “such a company’s articles of incorporation and permit it to operate under the provisions of this chapter” for “the establishment of such a company and its proposed articles of incorporation”, and provided that if the Administration approves the company to operate under the provisions of this chapter, it may issue the company a license for such operation.

Subsec. (d). Pub. L. 87-341, §11(b)(3), repealed subsec. (d) which specified the general powers of a company formed under this section.

Subsec. (e). Pub. L. 87-341, §11(b)(3), repealed subsec. (e) which provided for a board of directors for a company formed under this section.

1960—Subsec. (d)(9) to (11). Pub. L. 86-502 repealed pars. (9) which empowered companies to act as depositories or fiscal agents of the United States, and redesignated pars. (10) and (11) as (9) and (10), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Pub. L. 90-104, title II, §211, Oct. 11, 1967, 81 Stat. 272, provided that: “The effective date of this title [amending this section and sections 682 to 684, 686, 687, 687b, and 692 of this title] shall be ninety days after enactment [Oct. 11, 1967], except that, with respect to section 207 [amending section 686 of this title], it shall be January 1, 1968.”

SAVINGS PROVISION

Pub. L. 104-208, div. D, title II, §208(b)(3)(B), Sept. 30, 1996, 110 Stat. 3009-742, provided that: “The repeal under subparagraph (A) [repealing subsec. (d) of this section] shall not be construed to require the Administrator to cancel, revoke, withdraw, or modify any license issued under section 301(d) of the Small Business Investment Act of 1958 [subsec. (d) of this section] before the date of enactment of this Act [Sept. 30, 1996].”

REGULATORY REVIEW

Pub. L. 102-366, title IV, §408(d), Sept. 4, 1992, 106 Stat. 1017, directed Small Business Administration, not later than 90 days after Sept. 4, 1992, to complete a review of regulations intended to provide for safety and soundness of small business investment companies which obtain financing from the Administration under provisions of the Small Business Investment Act of 1958, 15 U.S.C. 661 et seq., and to exempt from such regulations, or to separately regulate, companies which do not obtain financing from the Administration.

REPORTS TO CONGRESS

Pub. L. 102-366, title IV, §408(e), Sept. 4, 1992, 106 Stat. 1017, directed Administration, within 180 days after Sept. 4, 1992, to report on actions taken pursuant to section 408(d) of Pub. L. 102-366, formerly set out above, to the Committees on Small Business of the Senate and the House of Representatives, including the rationale for its actions.

Pub. L. 102-366, title IV, §417(b), Sept. 4, 1992, 106 Stat. 1019, provided that not later than 4 years after Sept. 4, 1992, the Comptroller General was to transmit to Congress a report that reviewed the Small Business Investment Company program established under the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for the 3-year period following Sept. 4, 1992, with respect to each item listed in section 687(g)(3) of this title.

§ 682. Capital requirements

(a) Amount

(1) In general

Except as provided in paragraph (2), the private capital of each licensee shall be not less than—

(A) \$5,000,000; or

(B) \$10,000,000, with respect to each licensee authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Administration under this chapter.

(2) Exception

The Administrator may, in the discretion of the Administrator and based on a showing of special circumstances and good cause, permit the private capital of a licensee authorized or seeking authorization to issue participating securities to be purchased or guaranteed by the Administration to be less than \$10,000,000, but not less than \$5,000,000, if the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(3) Adequacy

In addition to the requirements of paragraph (1), the Administrator shall—

(A) determine whether the private capital of each licensee is adequate to assure a reasonable prospect that the licensee will be operated soundly and profitably, and managed actively and prudently in accordance with its articles; and

(B) determine that the licensee will be able¹ both prior to licensing and prior to approving any request for financing, to make periodic payments on any debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company’s owners and managers, the history of the company as an entity, if any, and the company’s financial resources.

(4) Exemption from capital requirements

The Administrator may, in the discretion of the Administrator, approve leverage for any licensee licensed under subsection (c) or (d) of section 681 of this title before September 30, 1996, that does not meet the capital requirements of paragraph (1), if—

(A) the licensee certifies in writing that not less than 50 percent of the aggregate dollar amount of its financings after September 30, 1996, will be provided to smaller enterprises; and

(B) the Administrator determines that such action would not create or otherwise contribute to an unreasonable risk of default or loss to the United States Government.

(b) Financial institution investments

(1) Certain banks

Notwithstanding the provisions of section 1845(a)(1)² of title 12, any national bank, or

¹ So in original. Probably should be followed by a comma.

² See References in Text note below.

any member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank.

(2) Certain savings associations

Notwithstanding any other provision of law, any Federal savings association may invest in any one or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event may the total amount of such investments by any such Federal savings association exceed 5 percent of the capital and surplus of the Federal savings association.

(c) Diversification of ownership

The Administrator shall ensure that the management of each licensee licensed after September 30, 1996, is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.

(Pub. L. 85-699, title III, §302, Aug. 21, 1958, 72 Stat. 692; Pub. L. 86-502, §5, June 11, 1960, 74 Stat. 196; Pub. L. 87-341, §3, Oct. 3, 1961, 75 Stat. 752; Pub. L. 88-273, §2, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90-104, title II, §§203(a), 204, Oct. 11, 1967, 81 Stat. 269, 270; Pub. L. 94-305, title I, §§106(e), 107, June 4, 1976, 90 Stat. 666; Pub. L. 95-89, title II, §210, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95-507, title I, §105, Oct. 24, 1978, 92 Stat. 1758; Pub. L. 102-366, title IV, §§406(a), 409, Sept. 4, 1992, 106 Stat. 1015, 1017; Pub. L. 104-208, div. D, title II, §208(c), Sept. 30, 1996, 110 Stat. 3009-742; Pub. L. 105-135, title II, §215(a), Dec. 2, 1997, 111 Stat. 2601; Pub. L. 106-554, §1(a)(9) [title IV, §403], Dec. 21, 2000, 114 Stat. 2763, 2763A-690.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsec. (a)(1)(B), see References in Text note set out under section 661 of this title.

Subsection (d) of section 681 of this title, referred to in subsec. (a)(4), was repealed by Pub. L. 104-208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009-742.

Section 1845(a)(1) of title 12, referred to in subsec. (b)(1), was repealed by Pub. L. 89-485, §9, July 1, 1966, 80 Stat. 240. See section 371c of Title 12, Banks and Banking.

CODIFICATION

September 30, 1996, referred to in subsecs. (a)(4) and (c), was in the original “the date of enactment of the Small Business Program Improvement Act of 1996”, which was translated as meaning the date of enactment of the Small Business Programs Improvement Act of 1996, to reflect the probable intent of Congress.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106-554 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1997—Subsec. (b). Pub. L. 105-135 substituted “any national bank, or any member bank of the Federal Re-

serve System or nonmember insured bank to the extent permitted under applicable State law, may invest in any 1 or more small business investment companies, or in any entity established to invest solely in small business investment companies, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank.” for “shares of stock in small business investment companies shall be eligible for purchase by national banks, and shall be eligible for purchase by other member banks of the Federal Reserve System and nonmember insured banks to the extent permitted under applicable State law; except that in no event may any such bank acquire shares in any small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed 5 percent of its capital and surplus.”

1996—Subsec. (a). Pub. L. 104-208, §208(c)(1), inserted heading and substituted pars. (1) to (3)(A) and “determine that the licensee will be able” in par. (3)(B) for “The combined private paid-in capital and paid-in surplus of any company licensed pursuant to section 681(c) and (d) of this title shall not be less than \$150,000: *Provided, however,* That the combined private paid-in capital and paid-in surplus of any company licensed on or after October 1, 1992 pursuant to section 681(c) of this title shall be not less than \$2,500,000 and pursuant to section 681(d) of this title shall be not less than \$1,500,000. In all cases, such capital and surplus shall be adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles. The Administration shall also determine the ability of the company.”.

Subsec. (a)(4). Pub. L. 104-208, §208(c)(2), added par. (4).

Subsec. (c). Pub. L. 104-208, §208(c)(3), inserted heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows: “The aggregate amount of shares in any such company or companies which may be owned or controlled by any stockholder, or by any group or class of stockholders, may be limited by the Administration.”

1992—Subsec. (a). Pub. L. 102-366 substituted “1992 pursuant to section 681(c) of this title shall be not less than \$2,500,000 and pursuant to section 681(d) of this title shall be not less than \$1,500,000” for “1979 pursuant to section 681(c) and (d) of this title shall be not less than \$500,000” and inserted at end “The Administration shall also determine the ability of the company, both prior to licensing and prior to approving any request for financing, to make periodic payments on any debt of the company which is interest bearing and shall take into consideration the income which the company anticipates on its contemplated investments, the experience of the company’s owners and managers, the history of the company as an entity, if any, and the company’s financial resources.”

1978—Subsec. (a). Pub. L. 95-507 provided that the combined private paid-in capital and paid-in surplus of any company licensed on or after Oct. 1, 1979 pursuant to section 681(c) and (d) of this title would not be less than \$500,000.

1977—Subsec. (b). Pub. L. 95-89 inserted “and” between “capital” and “surplus”.

1976—Subsec. (a). Pub. L. 94-305, §106(e), struck out “of incorporation” after “its articles”.

Subsec. (b). Pub. L. 94-305, §107, struck out provisions prohibiting the bank from acquiring shares in a small business investment company if the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights.

1967—Subsec. (a). Pub. L. 90-104, §203(a), substituted small business investment company minimum capital requirement, a combined private paid-in capital and paid-in surplus, of \$150,000 and adequate to assure reasonable prospect of sound and profitable company operations and active and prudent management in accord-

ance with the articles of incorporation for former requirement of a paid-in capital and surplus equal to at least \$300,000, and eliminated provisions for purchase of debentures of such companies in an amount not to exceed the lesser of \$700,000 or the amount of paid-in capital and surplus of the company from other sources and for subordination of debentures (both incorporated in section 686(b) of this title), for such purchases by the Administration only during certain prescribed period, and deeming the debentures part of the capital and surplus for certain purposes.

Subsec. (b). Pub. L. 90-104, §204, substituted prohibition against bank acquisition of small business investment company stock if, upon such acquisition, the aggregate amount of shares in such companies then held by the bank would exceed 5 percent of the capital and surplus, or the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights for former prohibition against holding of shares in an amount aggregating more than 2 percent of its capital and surplus.

1964—Subsec. (a). Pub. L. 88-273 increased the limitation on Administration purchase of debentures from \$400,000 to \$700,000 and extended the period for such purchase from three years after date of issuance of license or date of enactment of Pub. L. 87-341, the Small Business Investment Act Amendments of 1961 (Oct. 3, 1961), whichever is later, to five years after date of issuance of license or date of enactment of Pub. L. 88-273, the Small Business Investment Act Amendments of 1963 (Feb. 28, 1964), whichever is later.

1961—Subsec. (a). Pub. L. 87-341, §3(a), inserted “and growth”, limited the purchase of debentures to the extent that necessary funds are not available to the company involved from private sources on reasonable terms, increased the amount of purchasable debentures to not more than the lesser of \$400,000 or the paid-in capital and surplus of the company from other sources, and restricted such purchases to such period as may be fixed by the Administration, but not ending more than three years after the date of issuance of the company’s license under section 681c of this title, or Oct. 3, 1961, whichever is later, and deleted provisions limiting purchase of debentures to \$150,000.

Subsec. (b). Pub. L. 87-341, §3(b), increased the maximum amount of shares a bank may hold in small business investment companies to 2 percent of the capital and surplus.

1960—Subsec. (b). Pub. L. 86-502 substituted “Notwithstanding the provisions of section 1845(a)(1) of title 12, shares” for “Shares”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

§ 683. Borrowing operations

(a) Authority to issue obligations

Each small business investment company shall have authority to borrow money and to issue its securities, promissory notes, or other obligations under such general conditions and

subject to such limitations and regulations as the Administration may prescribe.

(b) Debentures and participating securities

To encourage the formation and growth of small business investment companies the Administration is authorized when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures or participating securities issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection. Debentures purchased or guaranteed by the Administration under this subsection shall be subordinate to any other debenture bonds, promissory notes, or other debts and obligations of such companies, unless the Administration in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise. Such debentures may be issued for a term of not to exceed fifteen years and shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such debentures, adjusted to the nearest one-eighth of 1 percent, plus, for debentures obligated after September 30, 2001, an additional charge, in an amount established annually by the Administration, as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter, which amount may not exceed 1.38 percent per year, and which shall be paid to and retained by the Administration. The debentures or participating securities shall also contain such other terms as the Administration may fix, and shall be subject to the following restrictions and limitations:

(1) The total amount of debentures and participating securities that may be guaranteed by the Administration and outstanding from a company licensed under section 681(c) of this title shall not exceed 300 per centum of the private capital of such company: *Provided*, That nothing in this paragraph shall require any such company that on March 31, 1993, has outstanding debentures in excess of 300 per centum of its private capital to prepay such excess: *And provided further*, That any such company may apply for an additional debenture guarantee or participating security guarantee with the proceeds to be used solely to pay the amount due on such maturing debenture, but the maturity of the new debenture or security shall be not later than September 30, 2002.

(2) MAXIMUM LEVERAGE.—

(A) IN GENERAL.—The maximum amount of outstanding leverage made available to any one company licensed under section 681(c) of this title may not exceed the lesser of—

- (i) 300 percent of such company's private capital; or
- (ii) \$150,000,000.

(B) **MULTIPLE LICENSES UNDER COMMON CONTROL.**—The maximum amount of outstanding leverage made available to two or more companies licensed under section 681(c) of this title that are commonly controlled (as determined by the Administrator) and not under capital impairment may not exceed \$350,000,000.

(C) **INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.**—(i) In calculating the outstanding leverage of a company for the purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the company in a smaller enterprise located in a low-income geographic area (as defined in section 689 of this title), to the extent that the total of such amounts does not exceed 50 percent of the company's private capital.

(ii) The maximum amount of outstanding leverage made available to—

(I) any 1 company described in clause (iii) may not exceed the lesser of 300 percent of private capital of the company, or \$175,000,000; and

(II) 2 or more companies described in clause (iii) that are under common control (as determined by the Administrator) may not exceed \$250,000,000.

(iii) A company described in this clause is a company licensed under section 681(c) of this title in the first fiscal year after February 17, 2009, or any fiscal year thereafter that certifies in writing that not less than 50 percent of the dollar amount of investments of that company shall be made in companies that are located in a low-income geographic area (as that term is defined in section 689 of this title).

(D) **INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.**—

(i) **IN GENERAL.**—Subject to clause (ii), in calculating the outstanding leverage of a company for purposes of subparagraph (A), the Administrator shall exclude the amount of the cost basis of any Energy Saving qualified investment in a smaller enterprise made in the first fiscal year after December 19, 2007, or any fiscal year thereafter by a company licensed in the applicable fiscal year.

(ii) **LIMITATIONS.**—

(I) **AMOUNT OF EXCLUSION.**—The amount excluded under clause (i) for a company shall not exceed 33 percent of the private capital of that company.

(II) **MAXIMUM INVESTMENT.**—A company shall not make an Energy Saving qualified investment in any one entity in an amount equal to more than 20 percent of the private capital of that company.

(III) **OTHER TERMS.**—The exclusion of amounts under clause (i) shall be subject to such terms as the Administrator may impose to ensure that there is no cost (as that term is defined in section 661a of

title 2) with respect to purchasing or guaranteeing any debenture involved.

(3) Subject to the foregoing dollar and percentage limits, a company licensed under section 681(c) of this title may issue and have outstanding both guaranteed debentures and participating securities: *Provided*, That the total amount of participating securities outstanding shall not exceed 200 per centum of private capital.

For purposes of this subsection, the term "venture capital" includes such common stock, preferred stock, or other financing with subordination or nonamortization characteristics as the Administration determines to be substantially similar to equity financing.

(c) Third party debt

The Administrator—

(1) shall not permit a licensee having outstanding leverage to incur third party debt that would create or contribute to an unreasonable risk of default or loss to the Federal Government; and

(2) shall permit such licensees to incur third party debt only on such terms and subject to such conditions as may be established by the Administrator, by regulation or otherwise.

(d) Investments in smaller enterprises

The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 25 percent of the aggregate dollar amount of financings of that licensee shall be provided to smaller enterprises.

(e) Capital impairment

Before approving any application for leverage submitted by a licensee under this chapter, the Administrator—

(1) shall determine that the private capital of the licensee meets the requirements of section 682(a) of this title; and

(2) shall determine, taking into account the nature of the assets of the licensee, the amount and terms of any third party debt owed by such licensee, and any other factors determined to be relevant by the Administrator, that the private capital of the licensee has not been impaired to such an extent that the issuance of additional leverage would create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(f) Redemption or repurchase of preferred stock

Notwithstanding any other provision of law—

(1) the Administrator may allow the issuer of any preferred stock sold to the Administration before November 1, 1989 to redeem or repurchase such stock, upon the payment to the Administration of an amount less than the par value of such stock, for a repurchase price determined by the Administrator after consideration of all relevant factors, including—

(A) the market value of the stock;

(B) the value of benefits provided and anticipated to accrue to the issuer;

(C) the amount of dividends paid, accrued, and anticipated; and

(D) the estimate of the Administrator of any anticipated redemption; and

(2) any moneys received by the Administration from the repurchase of preferred stock shall be available solely to provide debenture leverage to licensees having 50 percent or more in aggregate dollar amount of their financings invested in smaller enterprises.

(g) Guarantee of payment of and authority to purchase participating securities

In order to encourage small business investment companies to provide equity capital to small businesses, the Administration is authorized to guarantee the payment of the redemption price and prioritized payments on participating securities issued by such companies which are licensed pursuant to section 681(c) of this title, and a trust or a pool acting on behalf of the Administration is authorized to purchase such securities. Such guarantees and purchases shall be made on such terms and conditions as the Administration shall establish by regulation. For purposes of this section, (A) the term "participating securities" includes preferred stock, a preferred limited partnership interest or a similar instrument, including debentures under the terms of which interest is payable only to the extent of earnings and (B) the term "prioritized payments" includes dividends on stock, interest on qualifying debentures, or priority returns on preferred limited partnership interests which are paid only to the extent of earnings. Participating securities guaranteed under this subsection shall be subject to the following restrictions and limitations, in addition to such other restrictions and limitations as the Administration may determine:

(1) Participating securities shall be redeemed not later than 15 years after their date of issuance for an amount equal to 100 per centum of the original issue price plus the amount of any accrued prioritized payment: *Provided*, That if, at the time the securities are redeemed, whether as scheduled or in advance, the issuing company (A) has not paid all accrued prioritized payments in full as provided in paragraph (2) below and (B) has not sold or otherwise disposed of all investments subject to profit distributions pursuant to paragraph (11), the company's obligation to pay accrued and unpaid prioritized payments shall continue and payment shall be made from the realized gain, if any, on the disposition of such investments, but if on disposition there is no realized gain, the obligation to pay accrued and unpaid prioritized payments shall be extinguished: *Provided further*, That in the interim, the company shall not make any in-kind distributions of such investments unless it pays to the Administration such sums, up to the amount of the unrealized appreciation on such investments, as may be necessary to pay in full the accrued prioritized payments.

(2) Prioritized payments on participating securities shall be preferred and cumulative and payable out of the retained earnings available for distribution, as defined by the Administration, of the issuing company at a rate determined by the Secretary of the Treasury taking into consideration the current average market

yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such securities, adjusted to the nearest one-eighth of 1 percent, plus, for participating securities obligated after September 30, 2001, an additional charge, in an amount established annually by the Administration, as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing participating securities under this chapter, which amount may not exceed 1.46 percent per year, and which shall be paid to and retained by the Administration.

(3) In the event of liquidation of the company, participating securities shall be senior in priority for all purposes to all other equity interests in the issuing company, whenever created.

(4) Any company issuing a participating security under this chapter shall commit to invest or shall invest an amount equal to the outstanding face value of such security solely in equity capital. As used in this subsection, "equity capital" means common or preferred stock or a similar instrument, including subordinated debt with equity features which is not amortized and which provides for interest payments from appropriate sources, as determined by the Administration.

(5) The only debt (other than leverage obtained in accordance with this subchapter) which any company issuing a participating security under this subsection may have outstanding shall be temporary debt in amounts limited to not more than 50 per centum of private capital.

(6) The Administration may permit the proceeds of a participating security to be used to pay the principal amount due on outstanding debentures guaranteed by the Administration, if (A) the company has outstanding equity capital invested in an amount equal to the amount of the debentures being refinanced and (B) the Administration receives profit participation on such terms and conditions as it may determine, but not to exceed the per centums specified in paragraph (11).

(7) For purposes of computing profit participation under paragraph (11), except as otherwise determined by the Administration, the management expenses of any company which issues participating securities shall not be greater than 2.5 per centum per annum of the combined capital of the company, plus \$125,000 if the company's combined capital is less than \$20,000,000. For purposes of this paragraph, (A) the term "combined capital" means the aggregate amount of private capital and outstanding leverage and (B) the term "management expenses" includes salaries, office expenses, travel, business development, office and equipment rental, bookkeeping and the development, investigation and monitoring of investments, but does not include the cost of services provided by specialized outside consultants, outside lawyers and outside auditors, who perform services not generally expected of a venture capital company nor does such term include the cost of services provided by any af-

filiate of the company which are not part of the normal process of making and monitoring venture capital investments.

(8) Notwithstanding paragraph (9), if a company is operating as a limited partnership or as a subchapter S corporation or an equivalent pass-through entity for tax purposes and if there are no accumulated and unpaid prioritized payments, the company may make annual distributions to the partners, shareholders, or members in amounts not greater than each partner's, shareholder's, or member's maximum tax liability. For purposes of this paragraph, the term "maximum tax liability" means the amount of income allocated to each partner, shareholder, or member (including an allocation to the Administration as if it were a taxpayer) for Federal income tax purposes in the income tax return filed or to be filed by the company with respect to the fiscal year of the company immediately preceding such distribution, multiplied by the highest combined marginal Federal and State income tax rates for corporations or individuals, whichever is higher, on each type of income included in such return. For purposes of this paragraph, the term "State income tax" means the income tax of the State where the company's principal place of business is located. A company may also elect to make a distribution under this paragraph at any time during any calendar quarter based on an estimate of the maximum tax liability. If a company makes 1 or more interim distributions for a calendar year, and the aggregate amount of those distributions exceeds the maximum amount that the company could have distributed based on a single annual computation, any subsequent distribution by the company under this paragraph shall be reduced by an amount equal to the excess amount distributed.

(9) After making any distributions as provided in paragraph (8), a company with participating securities outstanding may distribute the balance of income to its investors, specifically including the Administration, in the per centums specified in paragraph (11), if there are no accumulated and unpaid prioritized payments and if all amounts due the Administration pursuant to paragraph (11) have been paid in full, subject to the following conditions:

(A) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 200 per centum of the amount of private capital, any amounts distributed shall be made to private investors and to the Administration in the ratio of leverage to private capital.

(B) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 100 per centum but not more than 200 per centum of the amount of private capital, 50 per centum of any amounts distributed shall be made to the Administration and 50 per centum shall be made to the private investors.

(C) If the amount of leverage outstanding is 100 per centum, or less, of the amount of private capital, the ratio shall be that for distribution of profits as provided in paragraph (11).

(D) Any amounts received by the Administration under subparagraph (A) or (B) shall be applied first as profit participation as provided in paragraph (11) and any remainder shall be applied as a prepayment of the principal amount of the participating securities or debentures.

(10) After making any distributions pursuant to paragraph (8), a company with participating securities outstanding may return capital to its investors, specifically including the Administration, if there are no accumulated and unpaid prioritized payments and if all amounts due the Administration pursuant to paragraph (11) have been paid in full. Any distributions under this paragraph shall be made to private investors and to the Administration in the ratio of private capital to leverage as of the date of the proposed distribution: *Provided*, That if the amount of leverage outstanding is less than 50 per centum of the amount of private capital or \$10,000,000, whichever is less, no distribution shall be required to be made to the Administration unless the Administration determines, on a case by case basis, to require distributions to the Administration to reduce the amount of outstanding leverage to an amount less than \$10,000,000.

(11)(A) A company which issues participating securities shall agree to allocate to the Administration a share of its profits determined by the relationship of its private capital to the amount of participating securities guaranteed by the Administration in accordance with the following:

(i) If the total amount of participating securities is 100 per centum of private capital or less, the company shall allocate to the Administration a per centum share computed as follows: the amount of participating securities divided by private capital times 9 per centum.

(ii) If the total amount of participating securities is more than 100 per centum but not greater than 200 per centum of private capital, the company shall allocate to the Administration a per centum share computed as follows:

(I) 9 per centum, plus

(II) 3 per centum of the amount of participating securities minus private capital divided by private capital.

(B) Notwithstanding any other provision of this paragraph—

(i) in no event shall the total per centum required by this paragraph exceed 12 per centum, unless required pursuant to the provisions of (ii) below,

(ii) if, on the date the participating securities are marketed, the interest rate on Treasury bonds with a maturity of 10 years is a rate other than 8 per centum, the Administration shall adjust the rate specified in paragraph (A) above, either higher or lower, by the same per centum by which the Treasury bond rate is higher or lower than 8 per centum, and

(iii) this paragraph shall not be construed to create any ownership interest of the Administration in the company.

(12) A company may elect to make an in-kind distribution of securities only if such securities are publicly traded and marketable. The company shall deposit the Administration's share of such securities for disposition with a trustee designated by the Administration or, at its option and with the agreement of the company, the Administration may direct the company to retain the Administration's share. If the company retains the Administration's share, it shall sell the Administration's share and promptly remit the proceeds to the Administration. As used in this paragraph, the term "trustee" means a person who is knowledgeable about and proficient in the marketing of thinly traded securities.

(h) Computation of amounts due under participating securities

The computation of amounts due the Administration under participating securities shall be subject to the following terms and conditions:

(1) The formula in subsection (g)(11) shall be computed annually and the Administration shall receive distributions of its profit participation at the same time as other investors in the company.

(2) The formula shall not be modified due to an increase in the private capital unless the increase is provided for in a proposed business plan submitted to and approved by the Administration.

(3) After distributions have been made, the Administration's share of such distributions shall not be recomputed or reduced.

(4) If the company prepaids or repays the participating securities, the Administration shall receive the requisite participation upon the distribution of profits due to any investments held by the company on the date of the repayment or prepayment.

(5) If a company is licensed on or before March 31, 1993, it may elect to exclude from profit participation all investments held on that date and in such case the Administration shall determine the amount of the future expenses attributable to such prior investment: *Provided*, That if the company issues participating securities to refinance debentures as authorized in subsection (g)(6), it may not elect to exclude profits on existing investments under this paragraph.

(i) Leverage fee

With respect to leverage granted by the Administration to a licensee, the Administration shall collect from the licensee a nonrefundable fee in an amount equal to 3 percent of the face amount of leverage granted to the licensee in the following manner: 1 percent upon the date on which the Administration enters into any commitment for such leverage with the licensee, and the balance of 2 percent (or 3 percent if no commitment has been entered into by the Administration) on the date on which the leverage is drawn by the licensee.

(j) Calculation of subsidy rate

All fees, interest, and profits received and retained by the Administration under this section shall be included in the calculations made by the Director of the Office of Management and

Budget to offset the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures and participating securities under this chapter.

(k) Energy saving debentures

In addition to any other authority under this chapter, a small business investment company licensed in the first fiscal year after December 19, 2007, or any fiscal year thereafter may issue Energy Saving debentures.

(Pub. L. 85-699, title III, §303, Aug. 21, 1958, 72 Stat. 692; Pub. L. 87-341, §4, Oct. 3, 1961, 75 Stat. 752; Pub. L. 88-273, §3, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90-104, title II, §205, Oct. 11, 1967, 81 Stat. 270; Pub. L. 92-213, §10, Dec. 22, 1971, 85 Stat. 776; Pub. L. 92-595, §2(c), (d), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94-305, title I, §104, June 4, 1976, 90 Stat. 665; Pub. L. 95-507, title I, §101, Oct. 24, 1978, 92 Stat. 1757; Pub. L. 101-162, title V, (4), Nov. 21, 1989, 103 Stat. 1025; Pub. L. 101-574, title II, §215(a)(1), (b), Nov. 15, 1990, 104 Stat. 2822; Pub. L. 102-366, title IV, §§402, 403, 412, 413, Sept. 4, 1992, 106 Stat. 1008, 1009, 1018; Pub. L. 103-403, title II, §215, Oct. 22, 1994, 108 Stat. 4184; Pub. L. 104-208, div. D, title II, §208(d)(1)-(4)(A), (5), (6), (h)(1)(A), Sept. 30, 1996, 110 Stat. 3009-743, 3009-744, 3009-746; Pub. L. 105-135, title II, §215(b)-(d), Dec. 2, 1997, 111 Stat. 2602, 2603; Pub. L. 106-9, §2(d)(1), Apr. 5, 1999, 113 Stat. 18; Pub. L. 106-554, §1(a)(8) [§1(d)], §1(a)(9) [title IV, §§404, 405], Dec. 21, 2000, 114 Stat. 2763, 2763A-664, 2763A-690, 2763A-691; Pub. L. 107-100, §2(a), Dec. 21, 2001, 115 Stat. 966; Pub. L. 108-84, §117, Sept. 30, 2003, 117 Stat. 1044; Pub. L. 108-172, §1(b), Dec. 6, 2003, 117 Stat. 2065; Pub. L. 108-447, div. K, title II, §201, Dec. 8, 2004, 118 Stat. 3465; Pub. L. 110-140, title XII, §§1205(a), 1206, Dec. 19, 2007, 121 Stat. 1773; Pub. L. 111-5, div. A, title V, §505(a), (c), Feb. 17, 2009, 123 Stat. 156, 157; Pub. L. 114-113, div. E, title V, §521(b), Dec. 18, 2015, 129 Stat. 2464.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (b), (e), (g)(2), (4), (j), and (k), see References in Text note set out under section 661 of this title.

AMENDMENTS

2015—Subsec. (b)(2)(B). Pub. L. 114-113 substituted "\$350,000,000" for "\$225,000,000".

2009—Subsec. (b)(2)(A), (B). Pub. L. 111-5, §505(a)(1), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which set forth the maximum amount of outstanding leverage for a company with private capital of not more than \$15,000,000, for a company with from \$15,000,000 to \$30,000,000 in private capital, and for a company with private capital of more than \$30,000,000, and set forth provisions relating to initial and annual adjustments of amounts.

Subsec. (b)(2)(C). Pub. L. 111-5, §505(a)(2), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (b)(4). Pub. L. 111-5, §505(a)(3), struck out par. (4) which related to maximum aggregate amount of leverage.

Subsec. (d). Pub. L. 111-5, §505(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) related to written certification that not less than 20 percent of the licensee's aggregate dollar amount of financings would be provided to smaller enterprises, required additional written certification by those licensees with leverage over \$90,000,000, and set forth provisions relating to multiple licensees.

2007—Subsec. (b)(2)(D). Pub. L. 110-140, §1206(a), added subpar. (D).

Subsec. (b)(4)(E). Pub. L. 110-140, §1206(b), added subpar. (E).

Subsec. (k). Pub. L. 110-140, §1205(a), added subsec. (k).

2004—Subsec. (g)(4). Pub. L. 108-447 substituted “chapter” for “subsection” in first sentence and “from appropriate sources, as determined by the Administration” for “contingent upon and limited to the extent of earnings” in second sentence.

2003—Subsec. (g)(2). Pub. L. 108-84 and Pub. L. 108-172 amended par. (2) identically, substituting “1.46 percent” for “1.38 percent”.

2001—Subsec. (b). Pub. L. 107-100, §2(a)(1), in introductory provisions, substituted “September 30, 2001” for “September 30, 2000”, struck out “of not more than 1 percent per year” after “annually by the Administration,” and inserted “which amount may not exceed 1.38 percent per year, and” before “which shall be paid”.

Subsec. (g)(2). Pub. L. 107-100, §2(a)(2), substituted “September 30, 2001” for “September 30, 2000”, struck out “of not more than 1 percent per year” after “annually by the Administration,” and inserted “which amount may not exceed 1.38 percent per year, and” before “which shall be paid”.

2000—Subsec. (b). Pub. L. 106-554, §1(a)(9) [title IV, §404(a)], in introductory provisions, substituted “plus, for debentures obligated after September 30, 2000, an additional charge, in an amount established annually by the Administration, of not more than 1 percent per year as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing debentures under this chapter, which shall be paid to and retained by the Administration” for “plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration”.

Subsec. (b)(2). Pub. L. 106-554, §1(a)(8) [§1(d)(1)], amended par. (2) generally, revising structure of par. from one consisting of introductory provisions and subpars. (A) to (D) to one consisting of subpars. (A) and (B), and adding subpar. (C).

Subsec. (b)(4)(D). Pub. L. 106-554, §1(a)(8) [§1(d)(2)], added subpar. (D).

Subsec. (g)(2). Pub. L. 106-554, §1(a)(9) [title IV, §404(b)], substituted “plus, for participating securities obligated after September 30, 2000, an additional charge, in an amount established annually by the Administration, of not more than 1 percent per year as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing participating securities under this chapter, which shall be paid to and retained by the Administration” for “plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration”.

Subsec. (g)(8). Pub. L. 106-554, §1(a)(9) [title IV, §405], substituted “subchapter S corporation” for “subchapter s corporation”, “any time during any calendar quarter based on an” for “the end of any calendar quarter based on a quarterly”, and “interim distributions for a calendar year,” for “quarterly distributions for a calendar year.”.

1999—Subsec. (g)(13). Pub. L. 106-9 struck out heading and text of par. (13). Text read as follows:

“(A) IN GENERAL.—Subject to the provisions of subparagraph (B), of the amount of the annual program level of participating securities approved in appropriations Acts, 50 percent shall be reserved for funding small business investment companies with private capital of not more than \$20,000,000.

“(B) EXCEPTION.—During the last quarter of each fiscal year, if the Administrator determines that there is a lack of qualified applicants with private capital of not more than \$20,000,000, the Administrator may utilize all or any part of the program level for securities reserved under subparagraph (A) for qualified applicants with private capital of more than \$20,000,000.”

1997—Subsec. (b)(2)(D). Pub. L. 105-135, §215(b)(1)(A), added subpar. (D).

Subsec. (b)(4). Pub. L. 105-135, §215(b)(1)(B), added par. (4) and struck out former par. (4) which read as follows: “In no event shall the aggregate amount of outstanding leverage of any such company or companies which are commonly controlled as determined by the Administration exceed \$90,000,000, unless the Administration determines on a case by case basis to permit a higher amount for companies under common control and imposes such additional terms and conditions as it determines appropriate to minimize the risk of loss to the Administration in the event of default.”

Subsec. (d). Pub. L. 105-135, §215(b)(2), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: “The Administrator shall require each licensee, as a condition of approval of an application for leverage, to certify in writing that not less than 20 percent of the aggregate dollar amount of the financings of the licensee will be provided to smaller enterprises.”

Subsec. (g)(8). Pub. L. 105-135, §215(c), inserted at end “A company may also elect to make a distribution under this paragraph at the end of any calendar quarter based on a quarterly estimate of the maximum tax liability. If a company makes 1 or more quarterly distributions for a calendar year, and the aggregate amount of those distributions exceeds the maximum amount that the company could have distributed based on a single annual computation, any subsequent distribution by the company under this paragraph shall be reduced by an amount equal to the excess amount distributed.”

Subsec. (i). Pub. L. 105-135, §215(d), substituted “in the following manner: 1 percent upon the date on which the Administration enters into any commitment for such leverage with the licensee, and the balance of 2 percent (or 3 percent if no commitment has been entered into by the Administration) on the date on which the leverage is drawn by the licensee” for “payable upon the earlier of the date of entry into any commitment for such leverage or the date on which the leverage is drawn by the licensee” before period at end.

1996—Subsec. (a). Pub. L. 104-208, §208(h)(1)(A)(i), substituted “securities,” for “debenture bonds.”.

Subsec. (b). Pub. L. 104-208, §208(d)(1), (6)(A), in first sentence struck out “(but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms)” after “is authorized” and in fifth sentence substituted “1 percent, plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration” for “1 per centum, plus such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes”.

Subsec. (c). Pub. L. 104-208, §208(d)(2), inserted heading and amended text of subsec. (c) generally. Prior to amendment, text consisted of 7 pars. which authorized the Administration to purchase securities and to purchase or guarantee payments on debentures issued by small business investment companies operating under section 681(d) of this title.

Subsec. (d). Pub. L. 104-208, §208(d)(3), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: “If the Administration guarantees debentures issued by a small business investment company operating under authority of section 681(d) of this title, it shall make, on behalf of the company payments in such amounts as will reduce the effective rate of interest to be paid by the company during the first five years of the term of such debentures to a rate of interest 3 points below the market rate of interest determined pursuant to section 687 of this title. Such payments shall be made by the Administration to the holder of the debenture, its agents or assigns, or to the appropriate central registration agent, if any. The authority to reduce interest rates as provided in this subsection shall be limited to amounts provided in advance in appropriations Acts, and the total amount shall be reserved within the business loan and investment fund to pay an amount equal to the amount of the reduction as it becomes due.”

Subsec. (e). Pub. L. 104-208, §208(d)(4)(A), inserted heading and amended text of subsec. (e) generally. Prior to amendment, text read as follows: "In determining the private capital of a small business investment company licensed under section 681(d) of this title and notwithstanding section 662(9) of this title, Federal, State, or local government funds received from sources other than the Administration shall be included solely for regulatory purposes, and not for the purpose of obtaining financial assistance from or licensing by the Administration, providing such funds were invested to November 21, 1989: *Provided*, That such companies may include in private capital for any purpose funds indirectly obtained from State or local governments. As used in this subsection, the term 'capital indirectly obtained' includes income generated by a State financing authority or similar State institution or agency or from the investment of State or local money or amounts originally provided to nonprofit institutions or corporations which such institutions or corporations, in their discretion, determine to invest in a company licensed under section 681(d) of this title."

Subsec. (f). Pub. L. 104-208, §208(h)(1)(A)(ii), added subsec. (f) and struck out former subsec. (f) which read as follows: "Notwithstanding the provisions of any other law, rule, or regulation, the Administration is authorized to allow the issuer of any preferred stock heretofore sold to the Administration to redeem or repurchase such stock upon the payment to the Administration of an amount less than the par value of such stock. The Administration, in its sole discretion, shall determine the repurchase price after considering factors including, but not limited to, the market value of the stock, the value of benefits previously provided and anticipated to accrue to the issuer, the amount of dividends previously paid, accrued, and anticipated, and the Administration's estimate of any anticipated redemption. The Administration may guarantee debentures as provided in paragraph (5) of subsection (c) of this section and allow the issuer to use the proceeds to make the payments authorized herein. Any monies received by the Administration from the repurchase of preferred stock shall be deposited in the business loan and investment fund and shall be available solely to provide assistance to companies operating under the authority of section 681(d) of this title, to the extent and in the amounts provided in advance in appropriations Acts."

Subsec. (g)(2). Pub. L. 104-208, §208(d)(6)(B), substituted "1 percent, plus an additional charge of 1 percent per annum which shall be paid to and retained by the Administration" for "1 per centum, plus, at the time the guarantee is issued, such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes, but not to exceed 2 per centum".

Subsec. (g)(4). Pub. L. 104-208, §208(d)(5), struck out "and maintain" after "shall invest".

Subsec. (g)(8). Pub. L. 104-208, §208(h)(1)(A)(iii), substituted "partners, shareholders, or members" for "partners or shareholders", "partner's, shareholder's, or member's" for "partner's or shareholder's", and "partner, shareholder, or member" for "partner or shareholder".

Subsecs. (i), (j). Pub. L. 104-208, §208(d)(6)(C), added subsecs. (i) and (j).

1994—Subsec. (g)(13). Pub. L. 103-403 added par. (13).

1992—Subsec. (b). Pub. L. 102-366, §402(1), inserted "or participating securities" after "debentures" in first and sixth sentences.

Subsec. (b)(1) to (4). Pub. L. 102-366, §402(2), added pars. (1) to (4) and struck out former pars. (1) to (3) which read as follows:

"(1) The total amount of debentures purchased or guaranteed and outstanding at any one time from a company which does not qualify under the terms of paragraph (2) of this subsection, shall not exceed 300 percent of the combined private paid-in capital and paid-in surplus of such company. In no event shall the debentures guaranteed and outstanding under this sub-

chapter of any such company or companies which are commonly controlled as determined by the Administration exceed \$35,000,000.

"(2) The total amount of debentures which may be purchased or guaranteed and outstanding at any one time from a company not complying with section 681(d) of this title, which has investments or legal commitments of 65 per centum or more of its total funds available for investment in small business concerns invested or committed in venture capital, and which has combined private paid-in capital and paid-in surplus of \$500,000 or more shall not exceed 400 per centum of its combined private paid-in capital and paid-in surplus. In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed \$35,000,000. Such additional purchases or guarantees which the Administration makes under this paragraph shall contain conditions to insure appropriate maintenance by the company receiving such assistance of the described ratio during the period in which debentures under this paragraph are outstanding.

"(3) Outstanding amounts of financial assistance provided to a company by the Administration prior to the effective date of the Small Business Investment Act Amendments of 1967 shall be deducted from the maximum amount of debentures which the Administration would otherwise be authorized to purchase or guarantee under this subsection."

Subsec. (c). Pub. L. 102-366, §412(1), (2), struck out "preferred" before "securities" in first sentence and inserted at end "As used in this subsection, the term 'securities' means shares of nonvoting stock or other corporate securities or limited partnership interests which have similar characteristics."

Subsec. (c)(1). Pub. L. 102-366, §412(3), in introductory provisions substituted "such securities" for "shares of nonvoting stock (or other corporate securities having similar characteristics)".

Subsec. (c)(6). Pub. L. 102-366, §402(3), inserted before period at end "except as provided in paragraph (7)".

Subsec. (c)(7). Pub. L. 102-366, §402(4), added par. (7).

Subsec. (e). Pub. L. 102-366, §413, inserted "licensed under section 681(d) of this title and notwithstanding section 662(9) of this title" after "company" and substituted "to November 21, 1989: *Provided*, That such companies may include in private capital for any purpose funds indirectly obtained from State or local governments. As used in this subsection, the term 'capital indirectly obtained' includes income generated by a State financing authority or similar State institution or agency or from the investment of State or local money or amounts originally provided to nonprofit institutions or corporations which such institutions or corporations, in their discretion, determine to invest in a company licensed under section 681(d) of this title." for "prior to November 21, 1989."

Subsecs. (g), (h). Pub. L. 102-366, §403, added subsecs. (g) and (h).

1990—Subsec. (b)(1). Pub. L. 101-574, §215(a)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: "In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed \$35,000,000."

Subsec. (c)(6). Pub. L. 101-574, §215(b)(1), inserted "under the provisions of this subchapter," after "debentures or securities".

Subsec. (d). Pub. L. 101-574, §215(b)(2), struck out after second sentence "The aggregate amount of debentures with interest rate reductions as provided in this subsection or as provided in section 687i of this title which may be outstanding at any time from any such company shall not exceed 200 per centum of the private paid-in capital and paid-in surplus of such company."

1989—Subsec. (c). Pub. L. 101-162 added subsec. (c) and struck out former subsec. (c) which contained provisions substantially similar to introductory provisions and pars. (1) to (4).

Subsecs. (d) to (f). Pub. L. 101-162 added subsecs. (d) to (f).

1978—Subsec. (c)(1). Pub. L. 95-507 increased the amount of preferred stock small business investment companies were authorized to sell to the Administration so long as such preferred stock leverage did not exceed 200 per centum of the qualified paid-in capital and so long as the amount of such stock purchased by the Administration was not greater in amount than the investment companies' outstanding equity investments and inserted definition of "equity securities".

1976—Subsec. (b)(1). Pub. L. 94-305, §104(a), substituted "300" for "200" and "\$35,000,000" for "\$15,000,000".

Subsec. (b)(2). Pub. L. 94-305, §104(b), substituted "400" for "300" and "\$35,000,000" for "\$20,000,000".

Subsec. (c)(2)(iii). Pub. L. 94-305, §104(c), substituted "400" for "300" and "300" for "200".

Subsec. (c)(4). Pub. L. 94-305, §104(c)(2), substituted "300" for "200".

1972—Subsec. (b)(1). Pub. L. 92-595, §2(c)(1), (2), substituted "combined private paid-in capital" for "combined paid-in capital" and "\$15,000,000" for "\$7,500,000".

Subsec. (b)(2). Pub. L. 92-595, §2(c)(3), substituted provisions relating to the purchase of debentures from companies not complying with section 681(d) of this title having investments or legal commitments of 65 per cent or more and whose combined private paid-in capital and paid-in surplus is \$500,000 or more for provisions relating to such purchase from companies having investments or legal commitments of 65 per cent or more and whose combined paid-in capital and paid-in surplus is \$1,000,000 or more, and increased the maximum amount of outstanding debentures from \$10,000,000 to \$20,000,000.

Subsec. (c). Pub. L. 92-595, §2(d), added subsec. (c).

1971—Subsec. (b). Pub. L. 92-213 inserted provision for a guaranty authority for the Administration and inserted requirement that such guaranty authority of the Administration be exercised only when authorized in appropriation Acts, authorized the purchase or guaranty on such terms as the Administration deems appropriate pursuant to regulations issued by the Administration, pledged the full faith and credit of the United States to the payment of amounts required to be paid in full under such guaranty, and struck out provision authorizing Administration cooperation with banks or other lending institutions in the purchase of debentures.

1967—Subsec. (b). Pub. L. 90-104 substituted purchase of debenture provisions of former section 682(a) of this title for former provision for loans (eliminating participation on deferred (standby) basis), incorporated subordination provision of such former section 682(a) (inserting provision for Administration exercise of reasonable investment prudence and for consideration of financial soundness of the company), provided for maximum term of fifteen years, substituted rate of interest taking into consideration current average market yield on outstanding marketable Treasury obligations with remaining periods to maturity comparable to average maturities on such debentures, as adjusted plus charge toward cost of programs, for rate of interest not lower than average investment yield on marketable Treasury obligations outstanding at time of loan involved, and added pars. (1) to (3) and definition of venture capital, former par. (1) limiting Administration purchases of company obligations to 50 per centum of paid-in capital and surplus or \$4,000,000, whichever is less, and par. (2) requiring loans to be of such sound value as reasonably to assure repayment.

1964—Subsec. (b). Pub. L. 88-273 provided for participation loans by Administration with lending institutions on an immediate or deferred basis and for a minimum interest rate measured by the average investment yield on marketable obligations of the United States outstanding at the time of the loan involved, and designated existing provisions as clauses (1) and (2).

1961—Subsec. (b). Pub. L. 87-341 limited the Administration's authorization to lend funds to the extent that the funds are not available to the company involved from private sources on reasonable terms, and the total

amount of obligations, including commitments to purchase such obligations, which can be purchased in any one company to not more than 50 percent of the paid-in capital and surplus or \$4,000,000, whichever is less, and inserted "All loans made by the Administration under this subsection shall be of such sound value as reasonably to assure repayment."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-100, §2(b), Dec. 21, 2001, 115 Stat. 966, provided that: "The amendments made by this section [amending this section] shall become effective on October 1, 2001."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-574, title II, §215(a)(2), Nov. 15, 1990, 104 Stat. 2822, as amended by Pub. L. 102-140, title VI, §609(c), Oct. 28, 1991, 105 Stat. 825, provided that: "The amendments made by paragraph (1) [amending this section] shall become effective on July 1, 1992."

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

REGULATIONS

Pub. L. 104-208, div. D, title II, §208(d)(4)(B), Sept. 30, 1996, 110 Stat. 3009-744, provided that:

"(i) UNIFORM APPLICABILITY.—Any regulation issued by the Administration to implement section 303(e) of the Small Business Investment Act of 1958 [15 U.S.C. 683(e)] that applies to any licensee with outstanding leverage obtained before the effective date of that regulation, shall apply uniformly to all licensees with outstanding leverage obtained before that effective date.

"(ii) DEFINITIONS.—For purposes of this subparagraph, the terms 'Administration', 'leverage' and 'licensee' have the same meanings as in section 103 of the Small Business Investment Act of 1958 [15 U.S.C. 662]."

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

§ 684. Equity capital for small-business concerns

(a) Function of investment companies

It shall be a function of each small business investment company to provide a source of equity capital for incorporated and unincorporated small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration.

(b) Conditions

Before any capital is provided to a small-business concern under this section—

(1) the company may require such concern to refinance any or all of its outstanding indebtedness so that the company is the only holder

of any evidence of indebtedness of such concern; and

(2) except as provided in regulations issued by the Administration, such concern shall agree that it will not thereafter incur any indebtedness without first securing the approval of the company and giving the company the first opportunity to finance such indebtedness.

(c) Repealed. Pub. L. 90-104, title II, § 206, Oct. 11, 1967, 81 Stat. 271

(d) Direct or cooperative provision of capital

Equity capital provided to incorporated small business concerns under this section may be provided directly or in cooperation with other investors, incorporated or unincorporated, through agreements to participate on an immediate basis.

(Pub. L. 85-699, title III, § 304, Aug. 21, 1958, 72 Stat. 693; Pub. L. 86-502, § 6, June 11, 1960, 74 Stat. 196; Pub. L. 87-341, § 5, Oct. 3, 1961, 75 Stat. 752; Pub. L. 90-104, title II, § 206, Oct. 11, 1967, 81 Stat. 271; Pub. L. 92-595, § 2(e), Oct. 27, 1972, 86 Stat. 1316.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-595 extended the function of small business investment companies to provide a source of equity capital to unincorporated business concerns.

1967—Subsec. (c). Pub. L. 90-104 repealed subsec. (c) which authorized purchase of stock of investment companies by small-business concerns in an amount equal to 5 per centum of capital provided.

1961—Subsec. (d). Pub. L. 87-341 added subsec. (d).

1960—Subsec. (a). Pub. L. 86-502 struck out “primary” before “function”, and substituted “a source of equity capital for incorporated small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration” for “a source of needed equity capital for small-business concerns in the manner and subject to the conditions described in this section”.

Subsec. (b). Pub. L. 86-502 redesignated subsec. (c) as (b), and repealed former subsec. (b) which required capital to be secured only through the purchase of debenture bonds.

Subsecs. (c), (d). Pub. L. 86-502 redesignated subsec. (d) as (c), and substituted “such concern shall have the right, exercisable in whole or in such part as such concern may elect, to become a stockholder-proprietor by investing in the capital stock of the company 5 per centum” for “such concern shall be required to become a stockholder-proprietor of the company by investing in the capital stock of the company, in an amount equal to not less than 2 percent nor more than 5 percent”. Former subsec. (c) redesignated (b).

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

§ 685. Long-term loans to small-business concerns

(a) Authorization

Each company is authorized to make loans, in the manner and subject to the conditions described in this section, to incorporated and unincorporated small-business concerns in order to provide such concerns with funds needed for sound financing, growth, modernization, and expansion.

(b) Direct loans; loans on participation basis

Loans made under this section may be made directly or in cooperation with other lenders, incorporated or unincorporated, through agreements to participate on an immediate or deferred basis.

(c) Maximum rate of interest

The maximum rate of interest for the company's share of any loan made under this section shall be determined by the Administration: *Provided*, That the Administration also shall permit those companies which have issued debentures pursuant to this chapter to charge a maximum rate of interest based upon the coupon rate of interest on the outstanding debentures, determined on an annual basis, plus such other expenses of the company as may be approved by the Administration.

(d) Maturity

Any loan made under this section shall have a maturity not exceeding twenty years.

(e) Soundness of loan; security

Any loan made under this section shall be of such sound value, or so secured, as reasonably to assure repayment.

(f) Extension or renewal

Any company which has made a loan to a small-business concern under this section is authorized to extend the maturity of or renew such loan for additional periods, not exceeding ten years, if the company finds that such extension or renewal will aid in the orderly liquidation of such loan.

(Pub. L. 85-699, title III, § 305, Aug. 21, 1958, 72 Stat. 693; Pub. L. 87-341, § 6, Oct. 3, 1961, 75 Stat. 753; Pub. L. 94-305, title I, § 105, June 4, 1976, 90 Stat. 666; Pub. L. 102-366, title IV, § 411, Sept. 4, 1992, 106 Stat. 1018.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsec. (c), see References in Text note set out under section 661 of this title.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-366 inserted before period at end “: *Provided*, That the Administration also shall permit those companies which have issued debentures pursuant to this chapter to charge a maximum rate of interest based upon the coupon rate of interest on the outstanding debentures, determined on an annual basis, plus such other expenses of the company as may be approved by the Administration”.

1976—Subsec. (b). Pub. L. 94-305 struck out provision that in agreements to participate in loans on a deferred basis, the participation by the company shall not be in excess of 90 percentum of the balance of the loan outstanding at the time of disbursement.

1961—Subsec. (b). Pub. L. 87-341 substituted “other lenders, incorporated or unincorporated” for “other lending institutions”.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

§ 686. Aggregate limitations on amount of assistance to any single enterprise

(a) Percentage limitation on private capital

If any small business investment company has obtained financing from the Administrator and such financing remains outstanding, the aggregate amount of securities acquired and for which commitments may be issued by such company under the provisions of this subchapter for any single enterprise shall not, without the approval of the Administrator, exceed 10 percent of the sum of—

- (1) the private capital of such company; and
- (2) the total amount of leverage projected by the company in the company's business plan that was approved by the Administrator at the time of the grant of the company's license.

(b) Repealed. Pub. L. 92-595, § 2(f), Oct. 27, 1972, 86 Stat. 1316

(c) Application of provisions to commitments incurred prior to effective date of section

With respect to obligations or securities acquired prior to the effective date of the Small Business Investment Act Amendments of 1967, and with respect to legally binding commitments issued prior to such date, the provisions of this section as in effect immediately prior to such effective date shall continue to apply.

(Pub. L. 85-699, title III, § 306, Aug. 21, 1958, 72 Stat. 694; Pub. L. 87-341, § 7(a), Oct. 3, 1961, 75 Stat. 753; Pub. L. 88-273, § 4, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90-104, title II, § 207, Oct. 11, 1967, 81 Stat. 271; Pub. L. 92-595, § 2(f), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 102-366, title IV, § 408(a), Sept. 4, 1992, 106 Stat. 1016; Pub. L. 111-5, div. A, title V, § 505(b), Feb. 17, 2009, 123 Stat. 156.)

REFERENCES IN TEXT

For effective date of the Small Business Investment Act Amendments of 1967, referred to in subsec. (c), see Effective Date of 1967 Amendment note set out under section 681 of this title.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111-5 amended subsec. (a) generally. Prior to amendment, text read as follows: “If any small business investment company has obtained financing from the Administration and such financing remains outstanding, the aggregate amount of obligations and securities acquired and for which commitments may be issued by such company under the provisions of this subchapter for any single enterprise shall not exceed 20 per centum of the private capital of such company, without the approval of the Administration.”

1992—Subsec. (a). Pub. L. 102-366 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Without the approval of the Administration, the aggregate amount of obligations and securities acquired and for which commitments may be issued by any small business investment company under the provisions of this chapter for any single enterprise shall not exceed 20 percent of the combined private paid-in capital and paid-in surplus of such company.”

1972—Subsec. (a). Pub. L. 92-595, § 2(f)(1), substituted “combined private paid-in capital” for “combined paid-in capital”.

Subsec. (b). Pub. L. 92-595, § 2(f)(2), repealed subsec. (b) which enumerated the items making up the combined paid-in capital and paid-in surplus of companies licensed prior to January 1, 1968.

1967—Subsec. (a). Pub. L. 90-104 substituted “paid-in capital and paid-in surplus of such company” for “cap-

ital and surplus of such small business investment company authorized by this chapter”.

Subsecs. (b), (c). Pub. L. 90-104 added subsecs. (b) and (c).

1964—Pub. L. 88-273 struck out the \$500,000 limitation on amount of assistance to any single enterprise.

1961—Pub. L. 87-341 inserted “or (2) \$500,000, whichever is the lesser”.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective Jan. 1, 1968, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87-341, § 7(b), Oct. 3, 1961, 75 Stat. 753, provided that: “The amendment made by subsection (a) [amending this section] shall apply only with respect to obligations and securities acquired by a small business investment company on or after the date of the enactment of this Act [Oct. 3, 1961]; except that such amendment shall not apply with respect to any obligations or securities so acquired pursuant to a commitment issued before such date.”

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

§ 687. Operation and regulation of companies

(a) Cooperation with banks and other financial institutions

Wherever practicable the operations of a small business investment company, including the generation of business, may be undertaken in cooperation with banks or other investors or lenders, incorporated or unincorporated, and any servicing or initial investigation required for loans or acquisitions of securities by the company under the provisions of this chapter may be handled through such banks or other investors or lenders on a fee basis. Any small business investment company may receive fees for services rendered to such banks and other investors and lenders.

(b) Use of advisory services; depository or fiscal agents; investment of funds

Each small business investment company may make use, wherever practicable, of the advisory services of the Federal Reserve System and of the Department of Commerce which are available for and useful to industrial and commercial businesses, and may provide consulting and advisory services on a fee basis and have on its staff persons competent to provide such services. Any Federal Reserve bank is authorized to act as a depository or fiscal agent for any company operating under provisions of this chapter. Any such company that is licensed before October 1, 2004 and has outstanding financings is authorized to invest funds not needed for its operations—

(1) in direct obligations of, or obligations guaranteed as to principal and interest by, the United States;

(2) in certificates of deposit or other accounts of federally insured banks or other federally insured depository institutions, if the certificates or other accounts mature or are

otherwise fully available not more than 1 year after the date of the investment; or

(3) in mutual funds, securities, or other instruments that consist of, or represent pooled assets of, investments described in paragraphs (1) or (2).

(c) Rules and regulations

The Administration is authorized to prescribe regulations governing the operations of small business investment companies, and to carry out the provisions of this chapter, in accordance with the purposes of this chapter.

(d) Forfeiture of rights, privileges, and franchises; jurisdiction

Should any small business investment company violate or fail to comply with any of the provisions of this chapter or of regulations prescribed hereunder, all of its rights, privileges, and franchises derived therefrom may thereby be forfeited. Before any such company shall be declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with or violation of this chapter shall be determined and adjudged by a court of the United States of competent jurisdiction in a suit brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of such company is located. Any such suit shall be brought by the United States at the instance of the Administration or the Attorney General.

(e) Liability of United States

Except as expressly provided otherwise in this chapter, nothing in this chapter or in any other provision of law shall be deemed to impose any liability on the United States with respect to any obligation entered into, or stocks issued, or commitments made, by any company operating under the provisions of this chapter.

(f) Performance of functions, powers, and duties by Administration and Administrator

In the performance of, and with respect to the functions, powers, and duties vested by this chapter, the Administrator and the Administration shall (in addition to any authority otherwise vested by this chapter) have the functions, powers, and duties set forth in the Small Business Act [15 U.S.C. 631 et seq.], and the provisions of sections 13 and 16 of that Act [15 U.S.C. 642, 645], insofar as applicable, are extended to the functions of the Administrator and the Administration under this chapter.

(g) Annual report on Small Business Investment activities

(1) The Administration shall include in its annual report, made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], a full and detailed account of its operations under this chapter. Such report shall set forth the amount of losses sustained by the Government as a result of such operations during the preceding fiscal year, together with an estimate of the total losses which the Government can reasonably expect to incur as a result of such operations during the then current fiscal year.

(2) In its annual report for the year ending December 31, 1967, and in each succeeding annual report made pursuant to section 10(a) of the

Small Business Act [15 U.S.C. 639(a)], the Administration shall include full and detailed accounts relative to the following matters:

(A) The Administration's recommendations with respect to the feasibility and organization of a small business capital bank to encourage private financing of small business investment companies to replace Government financing of such companies.

(B) The Administration's plans to insure the provision of small business investment company financing to all areas of the country and to all eligible small business concerns including steps taken to accomplish same.

(C) Steps taken by the Administration to maximize recoupment of Government funds incident to the inauguration and administration of the small business investment company program and to insure compliance with statutory and regulatory standards relating thereto.

(D) An accounting by the Office of Management and Budget with respect to Federal expenditures to business by executive agencies, specifying the proportion of said expenditures going to business concerns falling above and below small business size standards applicable to small business investment companies.

(E) An accounting by the Treasury Department with respect to tax revenues accruing to the Government from business concerns, incorporated and unincorporated, specifying the source of such revenues by concerns falling above and below the small business size standards applicable to small business investment companies.

(F) An accounting by the Treasury Department with respect to both tax losses and increased tax revenues related to small business investment company financing of both individual and corporate business taxpayers.

(G) Recommendations of the Treasury Department with respect to additional tax incentives to improve and facilitate the operations of small business investment companies and to encourage the use of their financing facilities by eligible small business concerns.

(H) A report from the Securities and Exchange Commission enumerating actions undertaken by that agency to simplify and minimize the regulatory requirements governing small business investment companies under the Federal securities laws and to eliminate overlapping regulation and jurisdiction as between the Securities and Exchange Commission, the Administration, and other agencies of the executive branch.

(I) A report from the Securities and Exchange Commission with respect to actions taken to facilitate and stabilize the access of small business concerns to the securities markets.

(J) Actions undertaken by the Securities and Exchange Commission to simplify compliance by small business investment companies with the requirements of the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] and to facilitate the election to be taxed as regulated investment companies pursuant to section 851 of title 26.

(3) In its annual report for the year ending on December 31, 1993, and in each succeeding an-

nual report made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], the Administration shall include a full and detailed description or account relating to—

(A) the number of small business investment companies the Administration licensed, the number of licensees that have been placed in liquidation, and the number of licensees that have surrendered their licenses in the previous year, identifying the amount of government leverage each has received and the type of leverage instruments each has used;

(B) the amount of government leverage that each licensee received in the previous year and the types of leverage instruments each licensee used;

(C) for each type of financing instrument, the sizes, geographic locations, and other characteristics of the small business investment companies using them, including the extent to which the investment companies have used the leverage from each instrument to make small business loans, equity investments, or both; and

(D) the frequency with which each type of investment instrument has been used in the current year and a comparison of the current year with previous years.

(h) Certifications of eligibility

(1) Certification by small business concern

Prior to receiving financial assistance from a company licensed pursuant to section 681 of this title, a small business concern shall certify in writing that it meets the eligibility requirements of the Small Business Investment Company Program or the Specialized Small Business Investment Company Program, as applicable.

(2) Certification by company

Prior to providing financial assistance to a small business concern under this chapter, a company licensed pursuant to section 681 of this title shall certify in writing that it has reviewed the application for assistance of the small business concern and that all documentation and other information supports the eligibility of the applicant.

(3) Retention of certifications

Certificates made pursuant to paragraphs (1) and (2) shall be retained by the company licensed pursuant to section 681 of this title for the duration of the financial assistance.

(i) Interest rates

(1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small business concerns.

(2) In the case of a business loan, the small business investment company making such loan may charge interest on such loan at a rate which does not exceed the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation). In this paragraph, the term “interest” includes only the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to the business

loan amount received by the small business concern, and does not include the value, if any, of contingent obligations, including warrants, royalty, or conversion rights, granting the small business investment company an ownership interest in the equity or increased future revenue of the small business concern receiving the business loan.

(3) A State law or constitutional provision shall be preempted for purposes of paragraph (2) with respect to any loan if such loan is made before the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of this subsection to apply with respect to loans made in such State, except that such State law or constitutional or other provision shall be preempted in the case of a loan made, on or after the date on which such law is adopted or such certification is made, pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.

(4)(A) If the maximum rate of interest authorized under paragraph (2) on any loan made by a small business investment company exceeds the rate which would be authorized by applicable State law if such State law were not preempted for purposes of this subsection, the charging of interest at any rate in excess of the rate authorized by paragraph (2) shall be deemed a forfeiture of the greater of (i) all interest which the loan carries with it, or (ii) all interest which has been agreed to be paid thereon.

(B) In the case of any loan with respect to which there is a forfeiture of interest under subparagraph (A), the person who paid the interest may recover from a small business investment company making such loan an amount equal to twice the amount of the interest paid on such loan. Such interest may be recovered in a civil action commenced in a court of appropriate jurisdiction not later than two years after the most recent payment of interest.

(Pub. L. 85-699, title III, §308, Aug. 21, 1958, 72 Stat. 694; Pub. L. 87-341, §§8, 11(c)(d), Oct. 3, 1961, 75 Stat. 753, 756; Pub. L. 88-273, §5, Feb. 28, 1964, 78 Stat. 147; Pub. L. 89-779, §3, Nov. 6, 1966, 80 Stat. 1359; Pub. L. 90-104, title II, §210, Oct. 11, 1967, 81 Stat. 271; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 93-501, title II, §204, Oct. 29, 1974, 88 Stat. 1559; Pub. L. 95-507, title I, §102, Oct. 24, 1978, 92 Stat. 1757; Pub. L. 96-104, title I, §104, Nov. 5, 1979, 93 Stat. 790; Pub. L. 96-161, title II, §204, Dec. 28, 1979, 93 Stat. 1236; Pub. L. 96-221, title V, §§524, 529, Mar. 31, 1980, 94 Stat. 166, 168; Pub. L. 99-226, §1, Dec. 28, 1985, 99 Stat. 1744; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102-366, title IV, §§408(c), 417(a), Sept. 4, 1992, 106 Stat. 1016, 1019; Pub. L. 103-403, title II, §214, Oct. 22, 1994, 108 Stat. 4184; Pub. L. 104-208, div. D, title II, §208(e), (h)(1)(B), Sept. 30, 1996, 110 Stat. 3009-745, 3009-747; Pub. L. 106-9, §2(a), Apr. 5, 1999, 113 Stat. 17; Pub. L. 108-447, div. K, title II, §202, Dec. 8, 2004, 118 Stat. 3465.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsecs. (a) to (h), see References in Text note set out under section 661 of this title.

The Small Business Act, referred to in subsec. (f), is Pub. L. 85-536, §2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 631 of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (g)(2)(J), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

CODIFICATION

Section 204 of Pub. L. 96-161, cited as a credit to this section, was repealed by section 529 of Pub. L. 96-221 effective at the close of Mar. 31, 1980. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue to apply to any loan made, any deposit made, or any obligation issued in any State during any period when the amendment was in effect in such State.

Section 104 of Pub. L. 96-104, cited as a credit to this section, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96-161. See Saving Provisions note, describing the provisions of section 212 of Pub. L. 96-161, set out under section 85 of Title 12, Banks and Banking.

Section 204 of Pub. L. 93-501, cited as a credit to this section, was repealed by Pub. L. 96-104, §1, Nov. 5, 1979, 93 Stat. 789. The amendment of this section by that repealed provision, described in the 1974 Amendment note, shall continue in effect for limited purposes pursuant to section 1 of Pub. L. 96-104. See Savings Provisions note, describing the provisions of section 1 of Pub. L. 96-104, set out under section 85 of Title 12, Banks and Banking.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-447, which directed the amendment of section 308(b) of the Small Business Investment Act by substituting “Any such company that is licensed before October 1, 2004 and has outstanding financings is authorized to invest funds not needed for its operations—” and pars. (1) to (3) for last sentence, was executed to this section, which is section 308 of the Small Business Investment Act of 1958, to reflect the probable intent of Congress. Prior to amendment, last sentence read as follows: “Such companies with outstanding financings are authorized to invest funds not reasonably needed for their operations in direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or in certificates of deposit maturing within one year or less, issued by any institution the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or in savings accounts of such institutions.”

1999—Subsec. (i)(2). Pub. L. 106-9 inserted at end: “In this paragraph, the term ‘interest’ includes only the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to the business loan amount received by the small business concern, and does not include the value, if any, of contingent obligations, including warrants, royalty, or conversion rights, granting the small business investment company an ownership interest in the equity or increased future revenue of the small business concern receiving the business loan.”

1996—Subsec. (e). Pub. L. 104-208, §208(e), substituted “Except as expressly provided otherwise in this chapter, nothing” for “Nothing”.

Subsec. (h). Pub. L. 104-208, §208(h)(1)(B), substituted “section 681 of this title” for “subsection (c) or (d) of section 681 of this title” in pars. (1) to (3).

1994—Subsec. (h). Pub. L. 103-403 added subsec. (h).

1992—Subsec. (b). Pub. L. 102-366, §408(c), inserted “with outstanding financings” after “Such companies” in third sentence.

Subsec. (g)(3). Pub. L. 102-366, §417(a), added par. (3).

1986—Subsec. (g)(2)(J). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1985—Subsec. (i)(2). Pub. L. 99-226, §1(a), substituted “the maximum rate prescribed by regulation by the Administration for loans made by any licensee (determined without regard to any State rate incorporated by such regulation)” for “the lowest of the rates described in subparagraphs (A), (B), and (C)” and struck out subpars. (A), (B), and (C) which described the rates.

Subsec. (i)(3). Pub. L. 99-226, §1(b), substituted “paragraph (2)” for “paragraph (2)(B)”.

1980—Subsec. (h). Pub. L. 96-221, §529, repealed Pub. L. 96-104 and title II of Pub. L. 96-161, resulting in the striking out of subsec. (h) which related to the limitation on interest rates, overcharges, forfeitures, and the recovery of interest payments. See subsec. (i) of this section for successor provisions. See also Codification and 1979 Amendment notes under this section.

Subsec. (i). Pub. L. 96-221, §524, added subsec. (i).

1979—Subsec. (h). Pub. L. 96-161 reenacted subsec. (h) [as added by Pub. L. 96-104] with three substitutions of dates: in par. (3)(A) “in the case of a State statute, July 1, 1980” was substituted for “July 1, 1981”, in par. (3)(B) “December 28, 1979” was substituted for “November 5, 1979”, and in par. (3)(C) “December 28, 1979” was substituted for “November 5, 1979”.

Pub. L. 96-104 added subsec. (h). A prior subsec. (h), also relating to limitation on interest rates, overcharges, forfeitures, and the recovery of interest payments, was repealed by section 1 of Pub. L. 96-104.

1978—Subsec. (b). Pub. L. 95-507 inserted provisions authorizing small business investment companies to invest funds not reasonably needed for their operations in certificates of deposit maturing within one year or less issued by particular insured institutions and savings accounts of institutions insured by the Federal Deposit Insurance Corporation.

1974—Subsec. (h). Pub. L. 93-501 added subsec. (h).

1967—Subsec. (g). Pub. L. 90-104 designated existing provisions as par. (1) and added par. (2).

1966—Subsec. (c). Pub. L. 89-779, §3(1), struck out provisions subjecting each small business investment company to examinations by examiners approved by the Administration and requiring the submission of reports by the companies. See section 687b(b) of this title.

Subsecs. (f), (g). Pub. L. 89-799, §3(2), added subsecs. (f) and (g).

1964—Subsec. (b). Pub. L. 88-273 authorized investment of funds in insured savings accounts (up to the amount of insurance) in institutions insured by the Federal Savings and Loan Insurance Corporation.

1961—Subsec. (a). Pub. L. 87-341, §8, substituted “investors or lenders” for “financial institutions” wherever appearing, and provided that these investors or lenders can be either incorporated or unincorporated.

Subsec. (b). Pub. L. 87-341, §11(c), substituted “operating under the provisions of this chapter” for “organized under this chapter”.

Subsec. (e). Pub. L. 87-341, §11(d), redesignated subsec. (g) as (e), substituted “operating under the provisions of this chapter” for “organized under this chapter”, and repealed former subsec. (e) which related to obtaining restraining orders against violators of this chapter.

Subsec. (f). Pub. L. 87-341, §11(d), repealed subsec. (f) which permitted small business investment companies to extend their corporate existence for a term of not more than 30 years. See subsec. (a) of section 681 of this title.

Subsec. (g). Pub. L. 87-341, §11(d), redesignated subsec. (g) as (e).

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-226, §2, Dec. 28, 1985, 99 Stat. 1744, provided that: "This Act [amending this section] shall apply to maximum interest rates prescribed by the Administration on or after April 1, 1980."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-221, title V, §529, Mar. 31, 1980, 94 Stat. 168, provided that the amendment made by that section is effective at the close of Mar. 31, 1980.

EFFECTIVE DATE OF 1979 AMENDMENTS

Pub. L. 96-161, title II, §207, Dec. 28, 1979, 93 Stat. 1238, which provided that amendment by Pub. L. 96-161 was applicable to loans made in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section made by Pub. L. 96-161 to apply with respect to loans made in such State; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment to the constitution of such State which prohibits the charging of interest at the rates provided in the amendment of this section by Pub. L. 96-161, was repealed by Pub. L. 96-221, title V, §529, Mar. 31, 1980, 94 Stat. 168.

Pub. L. 96-104, title I, §107, Nov. 5, 1979, 93 Stat. 792, which provided that amendment by Pub. L. 96-104 was applicable to loans made by any State during the period beginning on Nov. 5, 1979, and ending on the earlier of July 1, 1981, or the date after Nov. 5, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section to apply with respect to loans made in such State, or the date on which such State certifies that the voters of such State have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State, which prohibits the charging of interest at the rates provided in the amendment of this section, was repealed by Pub. L. 96-161, title II, §212, Dec. 28, 1979, 93 Stat. 1239.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-501, title II, §206, Oct. 29, 1974, 88 Stat. 1560, which provided that amendment by Pub. L. 93-501 was applicable to loans made in any state after Oct. 29, 1974, but prior to the earlier of July 1, 1977 or the date of enactment by the state of a law prohibiting the charging of interest at the rates provided in the amendment of this section, was repealed by Pub. L. 96-104, §1, Nov. 5, 1979, 93 Stat. 789.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

SAVINGS PROVISION

Pub. L. 96-221, title V, §529, Mar. 31, 1980, 94 Stat. 168, provided in part that, notwithstanding the repeal of Pub. L. 96-104 and title II of Pub. L. 96-161, the provisions of subsec. (h) of this section [which had been added to this section by those repealed laws] shall continue to apply to any loan made, any deposit made, or any obligation issued to any State during any period when those provisions were in effect in such State.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities

and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

TRANSFER OF FUNCTIONS

Bureau of the Budget designated as Office of Management and Budget and Offices of Director, Deputy Director, and Assistant Directors of Bureau of the Budget designated Director, Deputy Director, and Assistant Directors of Office of Management and Budget, respectively. Records, property, personnel, and funds of Bureau of the Budget transferred to Office of Management and Budget. See Part I of Reorganization Plan 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

In any case in which one or more provisions of, or amendments made by, title V of Pub. L. 96-221, section 1735f-7a of Title 12, Banks and Banking, or any other provisions of law, including section 85 of Title 12, apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate, see section 528 of Pub. L. 96-221, set out as a note under section 1735f-7a of Title 12.

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

Pub. L. 96-161, title II, §213, Dec. 28, 1979, 93 Stat. 1240, provided that the provisions of title II of Pub. L. 96-161, which amended this section and repealed provisions which had formerly amended this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates.

DEFINITION OF "STATE"

For purposes of subsec. (i) of this section, the term "State" to include the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, see section 527 of Pub. L. 96-221, set out as a note under section 1735f-7a of Title 12, Banks and Banking.

§687a. Revocation and suspension of licenses; cease and desist orders

(a) Grounds for suspension or revocation

A license may be revoked or suspended by the Administration—

(1) for false statements knowingly made in any written statement required under this subchapter, or under any regulation issued under this subchapter by the Administration;

(2) if any written statement required under this subchapter, or under any regulation issued under this subchapter by the Administrator, fails to state a material fact necessary in order to make the statement not misleading in the light of the circumstances under which the statement was made;

(3) for willful or repeated violation of, or willful or repeated failure to observe, any provision of this chapter;

(4) for willful or repeated violation of, or willful or repeated failure to observe, any rule or regulation of the Administration authorized by this chapter; or

(5) for violation of, or failure to observe, any cease and desist order issued by the Administration under this section.

(b) Grounds for cease and desist order

Where a licensee or any other person has not complied with any provision of this chapter, or

of any regulation issued pursuant thereto by the Administration, or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of such chapter or regulation, the Administration may order such licensee or other person to cease and desist from such action or failure to act. The Administration may further order such licensee or other person to take such action or to refrain from such action as the Administration deems necessary to insure compliance with this chapter and the regulations. The Administration may also suspend the license of a licensee, against whom an order has been issued, until such licensee complies with such order.

(c) Order to show cause; contents; hearing; issuance and service

Before revoking or suspending a license pursuant to subsection (a), or issuing a cease and desist order pursuant to subsection (b), the Administration shall serve upon the licensee and any other person involved an order to show cause why an order revoking or suspending the license or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters of fact and law asserted by the Administration and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before the Administration at a time and place stated in the order. If after hearing, or a waiver thereof, the Administration determines on the record that an order revoking or suspending the license or a cease and desist order should issue, it shall promptly issue such order, which shall include a statement of the findings of the Administration and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the licensee and any other person involved.

(d) Subpena of person, and books, papers and documents; fees and mileage; enforcement

The Administration may require by subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to the hearing from any place in the United States. Witnesses summoned before the Administration shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpena, the Administration, or any party to a proceeding before the Administration, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

(e) Petition to modify or set aside order; filing, time and place, Administration to submit record; action of court; review

An order issued by the Administration under this section shall be final and conclusive unless within thirty days after the service thereof the licensee, or other person against whom an order is issued, appeals to the United States court of appeals for the circuit in which such licensee has its principal place of business by filing with the clerk of such court a petition praying that the Administration's order be set aside or modi-

fied in the manner stated in the petition. After the expiration of such thirty days, a petition may be filed only by leave of court on a showing of reasonable grounds for failure to file the petition theretofore. The clerk of the court shall immediately cause a copy of the petition to be delivered to the Administration, and the Administration shall thereupon certify and file in the court a transcript of the record upon which the order complained of was entered. If before such record is filed the Administration amends or sets aside its order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Administration. The filing of a petition for review shall not of itself stay or suspend the operation of the order of the Administration, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. The court may affirm, modify, or set aside the order of the Administration. If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the Administration to reopen the hearing for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Administration may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file its modified or new findings and the amendments, if any, of its order, with the record of such additional evidence. No objection to an order of the Administration shall be considered by the court unless such objection was urged before the Administration or, if it was not so urged, unless there were reasonable grounds for failure to do so. The judgment and decree of the court affirming, modifying, or setting aside any such order of the Administration shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28.

(f) Enforcement of order

If any licensee or other person against which or against whom an order is issued under this section fails to obey the order, the Administration may apply to the United States court of appeals, within the circuit where the licensee has its principal place of business, for the enforcement of the order, and shall file a transcript of the record upon which the order complained of was entered. Upon the filing of the application the court shall cause notice thereof to be served on the licensee or other person. The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as is provided in subsection (e) for applications to set aside or modify orders.

(Pub. L. 85-699, title III, §309, as added Pub. L. 87-341, §9, Oct. 3, 1961, 75 Stat. 753; amended Pub. L. 89-779, §4, Nov. 6, 1966, 80 Stat. 1359; Pub. L. 98-620, title IV, §402(15)(A), (B), Nov. 8, 1984, 98 Stat. 3358.)

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a)(3), (4) and (b), see References in Text note set out under section 661 of this title.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-620, §402(15)(A), struck out provision that the proceedings in such cases in the court of appeals had to be made a preferred cause and had to be expedited in every way.

Subsec. (f). Pub. L. 98-620, §402(15)(B), struck out provision that the proceedings in such cases had to be made a preferred cause and expedited in every way.

1966—Subsec. (a). Pub. L. 89-779, §4(b), inserted reference to revocation in introductory text preceding par. (1), and, in pars. (1) and (2), deleted restriction which limited the grounds for suspension or revocation for false or misleading statements to the situation in which such statements were made for the purpose of obtaining a license.

Subsec. (b). Pub. L. 89-779, §4(c), expanded the Administration's authority to issue cease and desist orders by authorizing their issuance against individuals who have not complied with provisions of this chapter and against both licensees and individuals who have violated or are about to violate this chapter or regulations issued pursuant thereto.

Subsec. (c). Pub. L. 89-779, §4(d), inserted references to persons involved other than the licensee and to the revocation of licenses so as to conform the subsec. to the expansion of the Administration's authority to revoke licenses and to issue cease and desist orders to persons other than licensees under subsecs. (a) and (b).

Subsec. (e). Pub. L. 89-779, §4(e), authorized the appeal from an order issued by the Administration under this section by other persons, besides the licensee, against whom an order is issued.

Subsec. (f). Pub. L. 89-779, §4(f), provided that individuals as well as licensees are to be affected by subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 687b. Investigations and examinations; power to subpoena and take oaths and affirmations; aid of courts; examiners; reports

(a) Investigation of violations

The Administration may make such investigations as it deems necessary to determine whether a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a licensee, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of wit-

nesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(b) Examinations and reports

Each small business investment company shall be subject to examinations made by direction of the Investment Division of the Administration, which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations, and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities. Every such company shall make such reports to the Administration at such times and in such form as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] to the extent necessary to avoid duplication in reporting requirements.

(c) Examinations of small business investment companies

Each small business investment company shall be examined at least every two years in such detail so as to determine whether or not—

- (1) it has engaged solely in lawful activities and those contemplated by this subchapter;
- (2) it has engaged in prohibited conflicts of interest;
- (3) it has acquired or exercised illegal control of an assisted small business;
- (4) it has made investments in small businesses for not less than 1 year;
- (5) it has invested more than 20 per centum of its capital in any individual small business, if such restriction is applicable;
- (6) it has engaged in relending, foreign investments, or passive investments; or
- (7) it has charged an interest rate in excess of the maximum permitted by law:

Provided, That the Administration may waive the examination (A) for up to one additional year if, in its discretion, it determines such a delay would be appropriate, based upon the amount of debentures being issued by the company and its repayment record, the prior operating experience of the company, the contents and results of the last examination and the management expertise of the company, or (B) if it is a company whose operations have been suspended while the company is involved in litigation or is in receivership.

(d) Valuations**(1) Frequency of valuations****(A) In general**

Each licensee shall submit to the Administrator a written valuation of the loans and investments of the licensee not less often than semiannually or otherwise upon the request of the Administrator, except that any licensee with no leverage outstanding shall submit such valuations annually, unless the Administrator determines otherwise.

(B) Material adverse changes

Not later than 30 days after the end of a fiscal quarter of a licensee during which a material adverse change in the aggregate valuation of the loans and investments or operations of the licensee occurs, the licensee shall notify the Administrator in writing of the nature and extent of that change.

(C) Independent certification**(i) In general**

Not less than once during each fiscal year, each licensee shall submit to the Administrator the financial statements of the licensee, audited by an independent certified public accountant approved by the Administrator.

(ii) Audit requirements

Each audit conducted under clause (i) shall include—

(I) a review of the procedures and documentation used by the licensee in preparing the valuations required by this section; and

(II) a statement by the independent certified public accountant that such valuations were prepared in conformity with the valuation criteria applicable to the licensee established in accordance with paragraph (2).

(2) Valuation criteria

Each valuation submitted under this subsection shall be prepared by the licensee in accordance with valuation criteria, which shall—

(A) be established or approved by the Administrator; and

(B) include appropriate safeguards to ensure that the noncash assets of a licensee are not overvalued.

(Pub. L. 85-699, title III, §310, as added Pub. L. 87-341, §9, Oct. 3, 1961, 75 Stat. 755; amended Pub. L. 89-779, §5, Nov. 6, 1966, 80 Stat. 1360; Pub. L. 90-104, title II, §208, Oct. 11, 1967, 81 Stat. 271; Pub. L. 100-590, title I, §104, Nov. 3, 1988, 102 Stat. 2992; Pub. L. 102-366, title IV, §§406(b), 407(a), 408(b), Sept. 4, 1992, 106 Stat. 1016; Pub. L. 104-208, div. D, title II, §208(f), (h)(1)(C), Sept. 30, 1996, 110 Stat. 3009-745, 3009-747; Pub. L. 105-135, title II, §216, Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106-554, §1(a)(9) [title IV, §406], Dec. 21, 2000, 114 Stat. 2763, 2763A-691.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsec. (a), see References in Text note set out under section 661 of this title.

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables.

AMENDMENTS

2000—Subsec. (c)(4). Pub. L. 106-554 substituted “1 year” for “five years”.

1997—Subsec. (b). Pub. L. 105-135 inserted after first sentence “Fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities.”

1996—Subsec. (b). Pub. L. 104-208, §208(f)(1), inserted “which may be conducted with the assistance of a private sector entity that has both the qualifications to conduct and expertise in conducting such examinations,” after “Investment Division of the Administration,” in first sentence.

Subsec. (c)(4). Pub. L. 104-208, §208(h)(1)(C), struck out “not less than four years in the case of section 301(d) licensees and in all other cases,” after “small businesses for”.

Subsec. (d). Pub. L. 104-208, §208(f)(2), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: “Each small business investment company shall adopt written guidelines for determination of the value of investments made by such company. The board of directors of corporations and the general partners of partnerships shall have the sole responsibility for making a good faith determination of the fair market value of the investments made by such company. Determinations shall be made and reported to the Administration not less than semiannually or at more frequent intervals as the Administration determines appropriate: *Provided*, That any company which does not have outstanding financial assistance under the provisions of this subchapter shall be required to make such determinations and reports to the Administration annually, unless the Administration, in its discretion, determines otherwise.”

1992—Subsec. (b). Pub. L. 102-366, §407(a), substituted “Investment Division of” for “Administration by examiners selected or approved by”.

Subsec. (c)(5). Pub. L. 102-366, §408(b), inserted before semicolon at end “, if such restriction is applicable”.

Subsec. (d). Pub. L. 102-366, §406(b), added subsec. (d). 1988—Subsec. (b). Pub. L. 100-590 struck out second sentence, which read as follows: “Each such company shall be examined at least once each year, except that the Administrator may waive examination in the case of a company whose operations have been suspended by reason of the fact that the company is involved in litigation or is in receivership.”

Subsec. (c). Pub. L. 100-590 added subsec. (c).

1967—Subsec. (b). Pub. L. 90-104 required at least annual examination of small business investment companies but provided for waiver of examination of a company whose operations have been suspended because the company is involved in litigation or is in receivership.

1966—Pub. L. 89-779 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to

otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

TRANSFER OF RESOURCES

Pub. L. 102-366, title IV, § 407(b), Sept. 4, 1992, 106 Stat. 1016, provided that: “Effective October 1, 1992, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, and other funds employed, held, used, arising from, available or to be made available, which are related to the examination function provided by section 310 of the Small Business Investment Act of 1958 [15 U.S.C. 687b] shall be transferred by the Inspector General of the Small Business Administration to the Investment Division of the Small Business Administration.”

§ 687c. Injunctions and other orders

(a) Grounds; jurisdiction of court

Whenever, in the judgment of the Administration, a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter, the Administration may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administration that such licensee or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

(b) Equity jurisdiction of licensee and assets thereof

In any such proceeding the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the licensee or licensees and the assets thereof, wherever located; and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) Trusteeship or receivership over licensee

The Administration shall have authority to act as trustee or receiver of the licensee. Upon request by the Administration, the court may appoint the Administration to act in such capacity unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

(Pub. L. 85-699, title III, § 311, as added Pub. L. 87-341, § 9, Oct. 3, 1961, 75 Stat. 755; amended Pub. L. 89-779, § 6, Nov. 6, 1966, 80 Stat. 1360; Pub. L. 98-620, title IV, § 402(15)(C), Nov. 8, 1984, 98 Stat. 3358.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsec. (a), see References in Text note set out under section 661 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-620 struck out provision that the proceedings in such a case had to be made a preferred cause and had to be expedited in every way.

1966—Subsec. (c). Pub. L. 89-779 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 687d. Conflicts of interest

For the purpose of controlling conflicts of interest which may be detrimental to small business concerns, to small business investment companies, to the shareholders, partners, or members of either, or to the purposes of this chapter, the Administration shall adopt regulations to govern transactions with any officer, director, shareholder, partner, or member of any small business investment company, or with any person or concern, in which any interest, direct or indirect, financial or otherwise, is held by any officer, director, shareholder, partner, or member of (1) any small business investment company, or (2) any person or concern with an interest, direct or indirect, financial or otherwise, in any small business investment company. Such regulations shall include appropriate requirements for public disclosure necessary to the purposes of this section.

(Pub. L. 85-699, title III, § 312, as added Pub. L. 88-273, § 6(a), Feb. 28, 1964, 78 Stat. 147; amended Pub. L. 94-305, title I, § 106(f), June 4, 1976, 90 Stat. 666; Pub. L. 104-208, div. D, title II, § 208(h)(1)(D), Sept. 30, 1996, 110 Stat. 3009-747; Pub. L. 107-100, § 3, Dec. 21, 2001, 115 Stat. 966.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in text, see References in Text note set out under section 661 of this title.

AMENDMENTS

2001—Pub. L. 107-100 struck out “(including disclosure in the locality most directly affected by the transaction)” after “public disclosure”.

1996—Pub. L. 104-208, § 208(h)(1)(D), substituted “shareholders, partners, or members” for “shareholders or partners” and substituted “shareholder, partner, or member” for “shareholder, or partner” in two places.

1976—Pub. L. 94-305, § 106(f)(2), which directed the substitution of “shareholder, or partner” for “or shareholders” wherever appearing, was executed by making the substitution for “or shareholder” in two places to reflect the probable intent of Congress.

Pub. L. 94-305, § 106(f)(1), inserted “or partners” after “to the shareholders”.

§ 687e. Removal or suspension of management officials

(a) Definition of “management official”

In this section, the term “management official” means an officer, director, general partner, manager, employee, agent, or other participant in the management or conduct of the affairs of a licensee.

(b) Removal of management officials

(1) Notice of removal

The Administrator may serve upon any management official a written notice of its intention to remove that management official whenever, in the opinion of the Administrator—

(A) such management official—
 (i) has willfully and knowingly committed any substantial violation of—

- (I) this chapter;
- (II) any regulation issued under this chapter; or
- (III) a cease-and-desist order which has become final; or

(ii) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of a fiduciary duty of that person as a management official; and

(B) the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

(2) Contents of notice

A notice of intention to remove a management official, as provided in paragraph (1), shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon.

(3) Hearings

(A) Timing

A hearing described in paragraph (2) shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

- (i) the management official, and for good cause shown; or
- (ii) the Attorney General of the United States.

(B) Consent

Unless the management official shall appear at a hearing described in this paragraph in person or by a duly authorized representative, that management official shall be deemed to have consented to the issuance of an order of removal under paragraph (1).

(4) Issuance of order of removal

(A) In general

In the event of consent under paragraph (3)(B), or if upon the record made at a hearing described in this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

(B) Effectiveness

An order under subparagraph (A) shall—

(i) become effective at the expiration of 30 days after the date of service upon the subject licensee and the management official concerned (except in the case of an order issued upon consent as described in paragraph (3)(B), which shall become effective at the time specified in such order); and

(ii) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

(c) Authority to suspend or prohibit participation

(1) In general

The Administrator may, if the Administrator deems it necessary for the protection of the licensee or the interests of the Administration, suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of the licensee, or both, any management official referred to in subsection (b)(1), by written notice to such effect served upon the management official.

(2) Effectiveness

A suspension or prohibition under paragraph (1)—

(A) shall become effective upon service of notice under paragraph (1); and

(B) unless stayed by a court in proceedings authorized by paragraph (3), shall remain in effect—

(i) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under subsection (b); and

(ii) until such time as the Administrator shall dismiss the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

(3) Judicial review

Not later than 10 days after any management official has been suspended from office or prohibited from participation in the management or conduct of the affairs of a licensee, or both, under paragraph (1), that management official may apply to the United States district court for the judicial district in which the home office of the licensee is located, or the United States District Court for the District of Columbia, for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under subsection (b), and such court shall have jurisdiction to stay such action.

(d) Authority to suspend on criminal charges

(1) In general

Whenever a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon that management official, suspend that management official from office or prohibit that management official from further participation in any manner in the management or conduct of the affairs of the licensee, or both.

(2) Effectiveness

A suspension or prohibition under paragraph (1) shall remain in effect until the subject information, indictment, or complaint is finally disposed of, or until terminated by the Administrator.

(3) Authority upon conviction

If a judgment of conviction with respect to an offense described in paragraph (1) is entered against a management official, then at such time as the judgment is not subject to further appellate review, the Administrator may issue and serve upon the management official an order removing that management official, which removal shall become effective upon service of a copy of the order upon the licensee.

(4) Authority upon dismissal or other disposition

A finding of not guilty or other disposition of charges described in paragraph (1) shall not preclude the Administrator from thereafter instituting proceedings to suspend or remove the management official from office, or to prohibit the management official from participation in the management or conduct of the affairs of the licensee, or both, pursuant to subsection (b) or (c).

(e) Notification to licensees

Copies of each notice required to be served on a management official under this section shall also be served upon the interested licensee.

(f) Procedural provisions; judicial review**(1) Hearing venue**

Any hearing provided for in this section shall be—

(A) held in the Federal judicial district or in the territory in which the principal office of the licensee is located, unless the party afforded the hearing consents to another place; and

(B) conducted in accordance with the provisions of chapter 5 of title 5.

(2) Issuance of orders

After a hearing provided for in this section, and not later than 90 days after the Administrator has notified the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section.

(3) Authority to modify orders

The Administrator may modify, terminate, or set aside any order issued under this section—

(A) at any time, upon such notice, and in such manner as the Administrator deems proper, unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4)(B), and thereafter until the record in the proceeding has been filed in accordance with paragraph (4)(C); and

(B) upon such filing of the record, with permission of the court.

(4) Judicial review**(A) In general**

Judicial review of an order issued under this section shall be exclusively as provided in this subsection.

(B) Petition for review

Any party to a hearing provided for in this section may obtain a review of any order issued pursuant to paragraph (2) (other than an order issued with the consent of the management official concerned, or an order issued under subsection (d)), by filing in the court of appeals of the United States for the circuit in which the principal office of the licensee is located, or in the United States Court of Appeals for the District of Columbia Circuit, not later than 30 days after the date of service of such order, a written petition praying that the order of the Administrator be modified, terminated, or set aside.

(C) Notification to administration

A copy of a petition filed under subparagraph (B) shall be forthwith transmitted by the clerk of the court to the Administrator, and thereupon the Administrator shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(D) Court jurisdiction

Upon the filing of a petition under subparagraph (A)—

(i) the court shall have jurisdiction, which, upon the filing of the record under subparagraph (C), shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administrator, except as provided in the last sentence of paragraph (3)(B);

(ii) review of such proceedings shall be had as provided in chapter 7 of title 5; and

(iii) the judgment and decree of the court shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28.

(E) Judicial review not a stay

The commencement of proceedings for judicial review under this paragraph shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administrator under this section.

(Pub. L. 85-699, title III, §313, as added Pub. L. 89-779, §7, Nov. 6, 1966, 80 Stat. 1360; amended Pub. L. 107-100, §5, Dec. 21, 2001, 115 Stat. 967.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsec. (b)(1)(A)(i)(I), (II), see References in Text note set out under section 661 of this title.

AMENDMENTS

2001—Pub. L. 107-100 amended section catchline and text generally. Prior to amendment, text related to removal and suspension of directors and officers of licensees, with regard to written notice of intention to remove and grounds for removal; suspension pending completion of administrative proceedings; a hearing upon notice of intention to remove a director or officer and issuance of an order of removal; a stay of suspension and/or prohibition by a United States district court; suspension of directors and officers charged with felonies involving dishonesty or breach of trust; and procedural aspects of hearings provided for in this section.

§ 687f. Unlawful acts and omissions by officers, directors, employees, or agents

(a) Violation by licensee deemed violation by persons participating

Wherever a licensee violates any provision of this chapter or regulation issued thereunder by reason of its failure to comply with the terms thereof or by reason of its engaging in any act or practice which constitutes or will constitute a violation thereof, such violation shall be deemed to be also a violation and an unlawful act on the part of any person who, directly or indirectly, authorizes, orders, participates in, or causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions which constitute or will constitute, in whole or in part, such violation.

(b) Breach of fiduciary duty

It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a licensee to engage in any act or practice, or to omit any act, in breach of his fiduciary duty as such officer, director, employee, agent, or participant, if, as a result thereof, the licensee has suffered or is in imminent danger of suffering financial loss or other damage.

(c) Disqualification of officers and employees for dishonesty, fraud, or breach of trust

Except with the written consent of the Administration, it shall be unlawful—

(1) for any person hereafter to take office as an officer, director, or employee of a licensee, or to become an agent or participant in the conduct of the affairs or management of a licensee, if—

(A) he has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) he has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust; or

(2) for any person to continue to serve in any of the above-described capacities, if—

(A) he is hereafter convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) he is hereafter found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

(Pub. L. 85-699, title III, §314, as added Pub. L. 89-779, §7, Nov. 6, 1966, 80 Stat. 1363.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§ 687g. Penalties and forfeitures

(a) Report violations

Except as provided in subsection (b) of this section, a licensee which violates any regulation

or written directive issued by the Administrator, requiring the filing of any regular or special report pursuant to section 687b(b) of this title, shall forfeit and pay to the United States a civil penalty of not more than \$100 for each and every day of the continuance of the licensee's failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties provided for in this section shall accrue to the United States and may be recovered in a civil action brought by the Administration.

(b) Exemption from reporting requirements

The Administration may by rules and regulations, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing, exempt in whole or in part, any small business investment company from the provisions of subsection (a) of this section, upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administration finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administration may for the purposes of this section make any alternative requirements appropriate to the situation.

(Pub. L. 85-699, title III, §315, as added Pub. L. 89-779, §7, Nov. 6, 1966, 80 Stat. 1364.)

§ 687h. Jurisdiction and service of process

Any suit or action brought under section 687, 687a, 687c, 687e, or 687g of this title by the Administration at law or in equity to enforce any liability or duty created by, or to enjoin any violation of, this chapter, or any rule, regulation, or order promulgated thereunder, shall be brought in the district wherein the licensee maintains its principal office, and process in such cases may be served in any district in which the defendant maintains its principal office or transacts business, or wherever the defendant may be found.

(Pub. L. 85-699, title III, §316, as added Pub. L. 89-779, §7, Nov. 6, 1966, 80 Stat. 1364.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in text, see References in Text note set out under section 661 of this title.

§§ 687i, 687j. Repealed. Pub. L. 104-208, div. D, title II, § 208(h)(1)(E), Sept. 30, 1996, 110 Stat. 3009-747

Section 687i, Pub. L. 85-699, title III, §317, as added Pub. L. 92-595, §2(g), Oct. 27, 1972, 86 Stat. 1316; amended Pub. L. 95-507, title I, §103, Oct. 24, 1978, 92 Stat. 1758, established effective rate of interest of debentures purchased by Administration from small business investment company under authority of section 683(c) of this title.

Section 687j, Pub. L. 85-699, title III, §318, as added Pub. L. 92-595, §2(g), Oct. 27, 1972, 86 Stat. 1316, authorized Administration to extend benefits of sections 683(c) and 687i of this title to any small business investment company operating under authority of section 681(d) of this title, and which was owned, in whole or in part, by one or more small business investment companies, in accordance with regulations promulgated by Administration.

§ 687k. Guaranteed obligations not eligible for purchase by Federal Financing Bank

Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire after September 30, 1985—

- (1) any obligation the payment of principal or interest on which has at any time been guaranteed in whole or in part under this subchapter,
- (2) any obligation which is an interest in any obligation described in paragraph (1), or
- (3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

(Pub. L. 85-699, title III, §318, formerly §320, as added Pub. L. 99-272, title XVIII, §18004(a), Apr. 7, 1986, 100 Stat. 364; renumbered §318, Pub. L. 104-208, div. D, title II, §208(h)(1)(E), Sept. 30, 1996, 110 Stat. 3009-747.)

PRIOR PROVISIONS

A prior section 318 of Pub. L. 85-699 was classified to section 687j of this title, prior to repeal by Pub. L. 104-208.

§ 687l. Issuance and guarantee of trust certificates

(a) Issuance; debentures or participating securities composing trust or pool

The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by small business investment companies and guaranteed by the Administration under this chapter, or participating securities which are issued by such companies and purchased and guaranteed pursuant to section 683(g) of this title: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures or guaranteed participating securities.

(b) Terms and conditions of guarantee; payment of principal and interest

The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures or the redemption price of and priority payments on the participating securities, which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, or participating securities are redeemed, either voluntarily or involuntarily, or in the event of default of a debenture or voluntary or involuntary redemption of a participating security, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture or redeemed participating security and priority payments represent in the trust or pool. Interest on prepaid or defaulted debentures, or priority payments on participating securities, shall accrue and be guaranteed by the

Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures or redemption, whether voluntary or involuntary, of all participating securities residing in the pool.

(c) Full faith and credit of United States

The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

(d) Collection of fees

The Administration shall not collect a fee for any guarantee under this section: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (f)(2) of this section.

(e) Subrogation rights; ownership rights in debentures or participating securities

(1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures or participating securities residing in a trust or pool against which trust certificates are issued.

(f) Central registration requirements; regulation of brokers and dealers

(1) The Administration shall provide for a central registration of all trust certificates sold pursuant to this section.

(2) The Administrator shall contract with an agent or agents to carry out on behalf of the Administration the pooling and the central registration functions of this section including, notwithstanding any other provision of law, maintenance on behalf of and under the direction of the Administration, such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate trusts or pools backed by debentures or participating securities guaranteed under this chapter, and the issuance of trust certificates to facilitate such poolings. Such agent or agents shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government.

(3) Prior to any sale, the Administrator shall require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument.

(4) The Administrator is authorized to regulate brokers and dealers in trust certificates sold pursuant to this section.

(5) Nothing in this subsection shall prohibit the use of a book-entry or other electronic form of registration for trust certificates.

(Pub. L. 85-699, title III, §319, formerly §321, as added Pub. L. 99-272, title XVIII, §18005(a), Apr. 7, 1986, 100 Stat. 364; amended Pub. L. 101-162,

title V, (5), Nov. 21, 1989, 103 Stat. 1028; Pub. L. 102-366, title IV, § 404, Sept. 4, 1992, 106 Stat. 1013; renumbered § 319 and amended Pub. L. 104-208, div. D, title II, §§ 205(b), 208(h)(1)(E), (F), Sept. 30, 1996, 110 Stat. 3009-738, 3009-747.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsecs. (a) and (f)(2), see References in Text note set out under section 661 of this title.

PRIOR PROVISIONS

A prior section 319 of Pub. L. 85-699, which amended section 80a-18 of this title, was renumbered section 317.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-208, § 208(h)(1)(F)(i), struck out “, including companies operating under the authority of section 681(d) of this title,” after “investment companies”.

Subsec. (f)(1). Pub. L. 104-208, § 205(b)(1), struck out at end “Such central registration shall include with respect to each sale—

“(A) identification of each small business investment company;

“(B) the interest rate or prioritized payment rate paid by the small business investment company;

“(C) commissions, fees, or discounts paid to brokers and dealers in trust certificates;

“(D) identification of each purchaser of the trust certificate;

“(E) the price paid by the purchaser for the trust certificate;

“(F) the interest rate on the trust certificate;

“(G) the fee of any agent for carrying out the functions described in paragraph (2); and

“(H) such other information as the Administration deems appropriate.”

Subsec. (f)(2). Pub. L. 104-208, § 208(h)(1)(F)(ii), inserted “or investments in obligations of the United States” after “accounts”.

Subsec. (f)(5). Pub. L. 104-208, § 205(b)(2), added par. (5).

1992—Pub. L. 102-366 amended section generally, in subsec. (a) authorizing issuance of trust certificates representing ownership of participating securities, in subsec. (b) inserting provisions authorizing Administration to guarantee payment of redemption price of and priority payments on participating securities, in subsec. (e)(2) including participating securities within prohibition against preclusion or limitation of Administration's ownership rights, and in subsec. (f) in par. (1) substituting provisions relating to small business investment company for provisions relating to development company and requiring prioritized payment rate to be included in central registration requirements, and in par. (2) inserting provisions relating to participating securities, contracts to carry out pooling, and maintenance of commercial bank accounts.

1989—Subsec. (a). Pub. L. 101-162 inserted “, including companies operating under the authority of section 681(d) of this title,” after “investment companies”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 205 of Pub. L. 104-208 effective Oct. 1, 1996, see section 3 of Pub. L. 104-208, set out as a note under section 633 of this title.

Amendment by section 208 of Pub. L. 104-208 effective Sept. 30, 1996, see section 208(j) of Pub. L. 104-208, set out as a note under section 634 of this title.

REGULATIONS

Pub. L. 99-272, title XVIII, § 18005(b), Apr. 7, 1986, 100 Stat. 365, provided that:

“(1) Notwithstanding any law, rule, or regulation, within 60 days after the date of the enactment of this Act [Apr. 7, 1986], the Small Business Administration shall develop and promulgate final rules and regula-

tions to implement the central registration provisions provided for in section 321(f)(1) of the Small Business Investment Act [15 U.S.C. 687f(f)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in sections 321(f)(2) and 321(f)(3) of such Act.

“(2) Notwithstanding any law, rule, or regulation, within 60 days after the date of the enactment of this Act [Apr. 7, 1986], the Small Business Administration also shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement sections 504 and 505 [section 321; 15 U.S.C. 687f] of the Small Business Investment Act.”

EFFECT OF SMALL BUSINESS EQUITY ENHANCEMENT ACT OF 1992 ON SECURITIES LAWS

Nothing in amendment by Pub. L. 102-366 to be construed to affect applicability of securities laws or to otherwise supersede or limit jurisdiction of Securities and Exchange Commission, see section 418 of Pub. L. 102-366, set out as a note under section 661 of this title.

§ 687m. Periodic issuance of guarantees and trust certificates

The Administration shall issue guarantees under section 683 of this title and trust certificates under section 687l of this title at periodic intervals of not less than every 12 months and shall do so at such shorter intervals as its¹ deems appropriate, taking into consideration the amount and number of such guarantees or trust certificates.

(Pub. L. 85-699, title III, § 320, formerly § 322, as added Pub. L. 100-590, title I, § 106(a), Nov. 3, 1988, 102 Stat. 2993; renumbered § 320 and amended Pub. L. 104-208, div. D, title II, § 208(h)(1)(E), (G), Sept. 30, 1996, 110 Stat. 3009-747; Pub. L. 105-135, title II, § 215(e), Dec. 2, 1997, 111 Stat. 2603; Pub. L. 106-9, § 2(d)(2), Apr. 5, 1999, 113 Stat. 18.)

PRIOR PROVISIONS

A prior section 320 of Pub. L. 85-699 was renumbered section 318 and is classified to section 687k of this title.

AMENDMENTS

1999—Pub. L. 106-9 substituted “12 months” for “6 months”.

1997—Pub. L. 105-135 substituted “6 months” for “three months”.

1996—Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 687l of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of this title.

§ 688. Repealed. Pub. L. 87-341, § 11(e), Oct. 3, 1961, 75 Stat. 756

Section, Pub. L. 85-699, title III, § 309, Aug. 21, 1958, 72 Stat. 696, related to approval of State chartered investment companies. See subsec. (a) of section 681 of this title.

PART B—NEW MARKETS VENTURE CAPITAL PROGRAM

§ 689. Definitions

In this part, the following definitions apply:

¹ So in original. Probably should be “it”.

(1) Developmental venture capital

The term “developmental venture capital” means capital in the form of equity capital investments in businesses made with a primary objective of fostering economic development in low-income geographic areas. For the purposes of this paragraph, the term “equity capital” has the same meaning given such term in section 683(g)(4) of this title.

(2) Low-income individual

The term “low-income individual” means an individual whose income (adjusted for family size) does not exceed—

- (A) for metropolitan areas, 80 percent of the area median income; and
- (B) for nonmetropolitan areas, the greater of—
 - (i) 80 percent of the area median income; or
 - (ii) 80 percent of the statewide nonmetropolitan area median income.

(3) Low-income geographic area

the¹ term “low-income geographic area” means—

- (A) any population census tract (or in the case of an area that is not tracted for population census tracts, the equivalent county division, as defined by the Bureau of the Census of the Department of Commerce for purposes of defining poverty areas), if—

- (i) the poverty rate for that census tract is not less than 20 percent;
- (ii) in the case of a tract—

- (I) that is located within a metropolitan area, 50 percent or more of the households in that census tract have an income equal to less than 60 percent of the area median gross income; or
- (II) that is not located within a metropolitan area, the median household income for such tract does not exceed 80 percent of the statewide median household income; or

- (iii) as determined by the Administrator based on objective criteria, a substantial population of low-income individuals reside, an inadequate access to investment capital exists, or other indications of economic distress exist in that census tract; or

- (B) any area located within—

- (i) a HUBZone (as defined in section 632(p) of this title and the implementing regulations issued under that section);
- (ii) an urban empowerment zone or urban enterprise community (as designated by the Secretary of Housing and Urban Development); or
- (iii) a rural empowerment zone or rural enterprise community (as designated by the Secretary of Agriculture).

(4) New Markets Venture Capital company

The term “New Markets Venture Capital company” means a company that—

- (A) has been granted final approval by the Administrator under section 689c(e) of this title; and

- (B) has entered into a participation agreement with the Administrator.

(5) Operational assistance

The term “operational assistance” means management, marketing, and other technical assistance that assists a small business concern with business development.

(6) Participation agreement

The term “participation agreement” means an agreement, between the Administrator and a company granted final approval under section 689c(e) of this title, that—

- (A) details the company’s operating plan and investment criteria; and
- (B) requires the company to make investments in smaller enterprises at least 80 percent of which are located in low-income geographic areas.

(7) Specialized small business investment company

The term “specialized small business investment company” means any small business investment company that—

- (A) invests solely in small business concerns that contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages;
- (B) is organized or chartered under State business or nonprofit corporations statutes, or formed as a limited partnership; and
- (C) was licensed under section 681(d) of this title, as in effect before September 30, 1996.

(8) State

The term “State” means such² of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(Pub. L. 85-699, title III, §351, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-653.)

§ 689a. Purposes

The purposes of the New Markets Venture Capital Program established under this part are—

- (1) to promote economic development and the creation of wealth and job opportunities in low-income geographic areas and among individuals living in such areas by encouraging developmental venture capital investments in smaller enterprises primarily located in such areas; and

- (2) to establish a developmental venture capital program, with the mission of addressing the unmet equity investment needs of small enterprises located in low-income geographic areas, to be administered by the Administrator—

- (A) to enter into participation agreements with New Markets Venture Capital companies;

¹ So in original. Probably should be capitalized.

² So in original. Probably should be “each”.

(B) to guarantee debentures of New Markets Venture Capital companies to enable each such company to make developmental venture capital investments in smaller enterprises in low-income geographic areas; and

(C) to make grants to New Markets Venture Capital companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

(Pub. L. 85-699, title III, §352, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-655.)

§ 689b. Establishment

In accordance with this part, the Administrator shall establish a New Markets Venture Capital Program, under which the Administrator may—

(1) enter into participation agreements with companies granted final approval under section 689c(e) of this title for the purposes set forth in section 689a of this title;

(2) guarantee the debentures issued by New Markets Venture Capital companies as provided in section 689d of this title; and

(3) make grants to New Markets Venture Capital companies, and to other entities, under section 689g of this title.

(Pub. L. 85-699, title III, §353, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-655.)

§ 689c. Selection of New Markets Venture Capital companies

(a) Eligibility

A company shall be eligible to apply to participate, as a New Markets Venture Capital company, in the program established under this part if—

(1) the company is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity;

(2) the company has a management team with experience in community development financing or relevant venture capital financing; and

(3) the company has a primary objective of economic development of low-income geographic areas.

(b) Application

To participate, as a New Markets Venture Capital company, in the program established under this part a company meeting the eligibility requirements set forth in subsection (a) shall submit an application to the Administrator that includes—

(1) a business plan describing how the company intends to make successful developmental venture capital investments in identified low-income geographic areas;

(2) information regarding the community development finance or relevant venture capital qualifications and general reputation of the company's management;

(3) a description of how the company intends to work with community organizations and to

seek to address the unmet capital needs of the communities served;

(4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company intends to use licensed professionals, when necessary, on the company's staff or from an outside entity;

(5) with respect to binding commitments to be made to the company under this part, an estimate of the ratio of cash to in-kind contributions;

(6) a description of the criteria to be used to evaluate whether and to what extent the company meets the objectives of the program established under this part;

(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the company's business plan; and

(8) such other information as the Administrator may require.

(c) Conditional approval

(1) In general

From among companies submitting applications under subsection (b), the Administrator shall, in accordance with this subsection, conditionally approve¹ companies to participate in the New Markets Venture Capital Program.

(2) Selection criteria

In selecting companies under paragraph (1), the Administrator shall consider the following:

(A) The likelihood that the company will meet the goal of its business plan.

(B) The experience and background of the company's management team.

(C) The need for developmental venture capital investments in the geographic areas in which the company intends to invest.

(D) The extent to which the company will concentrate its activities on serving the geographic areas in which it intends to invest.

(E) The likelihood that the company will be able to satisfy the conditions under subsection (d).

(F) The extent to which the activities proposed by the company will expand economic opportunities in the geographic areas in which the company intends to invest.

(G) The strength of the company's proposal to provide operational assistance under this part as the proposal relates to the ability of the applicant to meet applicable cash requirements and properly utilize in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by persons on the company's staff or by persons outside of the company.

(H) Any other factors deemed appropriate by the Administrator.

(3) Nationwide distribution

The Administrator shall select companies under paragraph (1) in such a way that promotes investment nationwide.

¹ So in original. Probably should be "approve".

(d) Requirements to be met for final approval

The Administrator shall grant each conditionally approved company a period of time, not to exceed 2 years, to satisfy the following requirements:

(1) Capital requirement

Each conditionally approved company shall raise not less than \$5,000,000 of private capital or binding capital commitments from one or more investors (other than agencies or departments of the Federal Government) who met criteria established by the Administrator.

(2) Nonadministration resources for operational assistance**(A) In general**

In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company—

(i) shall have binding commitments (for contribution in cash or in kind)—

(I) from any sources other than the Small Business Administration that meet criteria established by the Administrator;

(II) payable or available over a multiyear period acceptable to the Administrator (not to exceed 10 years); and

(III) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1);

(ii) shall have purchased an annuity—

(I) from an insurance company acceptable to the Administrator;

(II) using funds (other than the funds raised under paragraph (1)), from any source other than the Administrator; and

(III) that yields cash payments over a multiyear period acceptable to the Administrator (not to exceed 10 years) in an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1); or

(iii) shall have binding commitments (for contributions in cash or in kind) of the type described in clause (i) and shall have purchased an annuity of the type described in clause (ii), which in the aggregate make available, over a multiyear period acceptable to the Administrator (not to exceed 10 years), an amount not less than 30 percent of the total amount of capital and commitments raised under paragraph (1).

(B) Exception

The Administrator may, in the discretion of the Administrator and based upon a showing of special circumstances and good cause, consider an applicant to have satisfied the requirements of subparagraph (A) if the applicant has—

(i) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under subparagraph (A); and

(ii) binding commitments in an amount equal to not less than 20 percent of the

total amount required under paragraph (A).

(C) Limitation

In order to comply with the requirements of subparagraphs (A) and (B), the total amount of a company's in-kind contributions may not exceed 50 percent of the company's total contributions.

(e) Final approval; designation

The Administrator shall, with respect to each applicant conditionally approved to operate as a New Markets Venture Capital company under subsection (c), either—

(1) grant final approval to the applicant to operate as a New Markets Venture Capital company under this part and designate the applicant as such a company, if the applicant—

(A) satisfies the requirements of subsection (d) on or before the expiration of the time period described in that subsection; and

(B) enters into a participation agreement with the Administrator; or

(2) if the applicant fails to satisfy the requirements of subsection (d) on or before the expiration of the time period described in that subsection, revoke the conditional approval granted under that subsection.

(Pub. L. 85-699, title III, §354, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-655.)

§ 689d. Debentures**(a) In general**

The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any New Markets Venture Capital company.

(b) Terms and conditions

The Administrator may make guarantees under this section on such terms and conditions as it deems appropriate, except that the term of any debenture guaranteed under this section shall not exceed 15 years.

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

(d) Maximum guarantee**(1) In general**

Under this section, the Administrator may guarantee the debentures issued by a New Markets Venture Capital company only to be¹ extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

(2) Treatment of certain Federal funds

For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than an agency or department of the Federal Government.

¹ So in original. Probably should be "the".

(e) Investment limitations**(1) Definition**

In this subsection, the term “covered New Markets Venture Capital company” means a New Markets Venture Capital company—

(A) granted final approval by the Administrator under section 689c(e) of this title on or after March 1, 2002; and

(B) that has obtained a financing from the Administrator.

(2) Limitation

Except to the extent approved by the Administrator, a covered New Markets Venture Capital company may not acquire or issue commitments for securities under this subchapter for any single enterprise in an aggregate amount equal to more than 10 percent of the sum of—

(A) the regulatory capital of the covered New Markets Venture Capital company; and

(B) the total amount of leverage projected in the participation agreement of the covered New Markets Venture Capital.

(Pub. L. 85-699, title III, §355, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-658; amended Pub. L. 111-240, title I, §1115, Sept. 27, 2010, 124 Stat. 2508.)

AMENDMENTS

2010—Subsec. (e). Pub. L. 111-240 added subsec. (e).

§ 689e. Issuance and guarantee of trust certificates**(a) Issuance**

The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a New Markets Venture Capital company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) Guarantee**(1) In general**

The Administrator may, under such terms and conditions as it deems appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

(2) Limitation

Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) Prepayment or default

In the event that a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of

the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

(d) Fees

The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

(e) Subrogation and ownership rights**(1) Subrogation**

In the event the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) Ownership rights

No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) Management and administration**(1) Registration**

The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) Contracting of functions**(A) In general**

The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section including, notwithstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) Fidelity bond or insurance requirement

Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) Regulation of brokers and dealers

The Administrator may regulate brokers and dealers in trust certificates issued under this section.

(4) Electronic registration

Nothing in this subsection may be construed to prohibit the use of a book-entry or other

electronic form of registration for trust certificates issued under this section.

(Pub. L. 85-699, title III, § 356, as added Pub. L. 106-554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-658.)

§ 689f. Fees

Except as provided in section 689e(d) of this title, the Administrator may charge such fees as it deems appropriate with respect to any guarantee or grant issued under this part.

(Pub. L. 85-699, title III, § 357, as added Pub. L. 106-554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-660.)

§ 689g. Operational assistance grants

(a) In general

(1) Authority

In accordance with this section, the Administrator may make grants to New Markets Venture Capital companies and to other entities, as authorized by this part, to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

(2) Terms

Grants made under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) Grants to specialized small business investment companies

(A) Authority

In accordance with this section, the Administrator may make grants to specialized small business investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies after the effective date of the New Markets Venture Capital Program Act of 2000.

(B) Use of funds

The proceeds of a grant made under this paragraph may be used by the company receiving such grant only to provide operational assistance in connection with an equity investment (made with capital raised after the effective date of the New Markets Venture Capital Program Act of 2000) in a business located in a low-income geographic area.

(C) Submission of plans

A specialized small business investment company shall be eligible for a grant under this section only if the company submits to the Administrator, in such form and manner as the Administrator may require, a plan for use of the grant.

(4) Grant amount

(A) New Markets Venture Capital companies

The amount of a grant made under this subsection to a New Markets Venture Capital company shall be equal to the resources (in cash or in kind) raised by the company under section 689c(d)(2) of this title.

(B) Other entities

The amount of a grant made under this subsection to any entity other than a New Markets Venture Capital company shall be equal to the resources (in cash or in kind) raised by the entity in accordance with the requirements applicable to New Market Venture Capital companies set forth in section 689c(d)(2) of this title.

(5) Pro rata reductions

If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (4), the Administrator shall make pro rata reductions in the amounts otherwise payable to each company and entity under such paragraph.

(b) Supplemental grants

(1) In general

The Administrator may make supplemental grants to New Markets Venture Capital companies and to other entities, as authorized by this part under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

(2) Matching requirement

The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide from resources (in a¹ cash or in kind), other than² those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) Limitation

None of the assistance made available under this section may be used for any overhead or general and administrative expense of a New Markets Venture Capital company or a specialized small business investment company.

(Pub. L. 85-699, title III, § 358, as added Pub. L. 106-554, § 1(a)(8) [§ 1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-660.)

REFERENCES IN TEXT

The effective date of the New Markets Venture Capital Program Act of 2000, referred to in subsec. (a)(3)(A), (B), probably means the date of enactment of section 1 of H.R. 5663, as enacted by Pub. L. 106-554, § 1(a)(8), which was approved Dec. 21, 2000.

§ 689h. Bank participation

(a) In general

Except as provided in subsection (b), any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any New Markets Venture Capital company, or in any entity established to invest solely in New Markets Venture Capital companies.

(b) Limitation

No bank described in subsection (a) may make investments described in such subsection that

¹ So in original. The article probably should not appear.

² So in original. Probably should be "than".

are greater than 5 percent of the capital and surplus of the bank.

(Pub. L. 85-699, title III, §359, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-661.)

§ 689i. Federal Financing Bank

Section 687k of this title shall not apply to any debenture issued by a New Markets Venture Capital company under this part.

(Pub. L. 85-699, title III, §360, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-661.)

§ 689j. Reporting requirement

Each New Markets Venture Capital company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

(1) information related to the measurement criteria that the company proposed in its program application; and

(2) in each case in which the company under this part makes an investment in, or a loan or grant to, a business that is not located in a low-income geographic area, a report on the number and percentage of employees of the business who reside in such areas.

(Pub. L. 85-699, title III, §361, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-661.)

§ 689k. Examinations

(a) In general

Each New Markets Venture Capital company that participates in the program established under this part shall be subject to examinations made at the direction of the Investment Division of the Small Business Administration in accordance with this section.

(b) Assistance of private sector entities

Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such examinations.

(c) Costs

(1) ¹ Assessment

(A) In general

The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

(B) Payment

Any company against which the Administrator assesses costs under this paragraph shall pay such costs.

(d) Deposit of funds

Funds collected under this section shall be deposited in the account for salaries and expenses of the Small Business Administration.

(Pub. L. 85-699, title III, §362, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-662.)

¹ So in original. No par. (2) has been enacted.

§ 689l. Injunctions and other orders

(a) In general

Whenever, in the judgment of the Administrator, a New Markets Venture Capital company or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter, the Administrator may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administrator that such New Markets Venture Capital company or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond.

(b) Jurisdiction

In any proceeding under subsection (a), the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the New Market Venture Capital company and the assets thereof, wherever located, and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) Administrator as trustee or receiver

(1) Authority

The Administrator may act as trustee or receiver of a New Markets Venture Capital company.

(2) Appointment

Upon request of the Administrator, the court may appoint the Administrator to act as a trustee or receiver of a New Markets Venture Capital company unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

(Pub. L. 85-699, title III, §363, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-662.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§ 689m. Additional penalties for noncompliance

(a) In general

With respect to any New Markets Venture Capital company that violates or fails to comply with any of the provisions of this chapter, of any regulation issued under this chapter, or of any participation agreement entered into under this chapter, the Administrator may in accordance with this section—

(1) void the participation agreement between the Administrator and the company; and

(2) cause the company to forfeit all of the rights and privileges derived by the company from this chapter.

(b) Adjudication of noncompliance**(1) In general**

Before the Administrator may cause a New Markets Venture Capital company to forfeit rights or privileges under subsection (a), a court of the United States of competent jurisdiction must find that the company committed a violation, or failed to comply, in a cause of action brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of the company is located.

(2) Parties authorized to file causes of action

Each cause of action brought by the United States under this subsection shall be brought by the Administrator or by the Attorney General.

(Pub. L. 85-699, title III, §364, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-663.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§ 689n. Unlawful acts and omissions; breach of fiduciary duty**(a) Parties deemed to commit a violation**

Whenever any New Markets Venture Capital company violates any provision of this chapter, of a regulation issued under this chapter, or of a participation agreement entered into under this chapter, by reason of its failure to comply with its terms or by reason of its engaging in any act or practice that constitutes or will constitute a violation thereof, such violation shall also be deemed to be a violation and an unlawful act committed by any person who, directly or indirectly, authorizes, orders, participates in, causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions that constitute or will constitute, in whole or in part, such violation.

(b) Fiduciary duties

It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a New Markets Venture Capital company to engage in any act or practice, or to omit any act or practice, in breach of the person’s fiduciary duty as such officer, director, employee, agent, or participant if, as a result thereof, the company suffers or is in imminent danger of suffering financial loss or other damage.

(c) Unlawful acts

Except with the written consent of the Administrator, it shall be unlawful—

(1) for any person to take office as an officer, director, or employee of any New Markets Venture Capital company, or to become an agent or participant in the conduct of the affairs or management of such a company, if the person—

(A) has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust; or

(B) has been found civilly liable in damages, or has been permanently or tempo-

rarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud, or breach of trust; and

(2) for any person¹ continue to serve in any of the capacities described in paragraph (1), if—

(A) the person is convicted of a felony, or any other criminal offense involving dishonesty or breach of trust; or

(B) the person is found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

(Pub. L. 85-699, title III, §365, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-663.)

REFERENCES IN TEXT

For definition of “this chapter”, referred to in subsec. (a), see References in Text note set out under section 661 of this title.

§ 689o. Removal or suspension of directors or officers

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 687e of this title (to the extent such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any New Markets Venture Capital company.

(Pub. L. 85-699, title III, §366, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-664.)

§ 689p. Regulations

The Administrator may issue such regulations as it deems necessary to carry out the provisions of this part in accordance with its purposes.

(Pub. L. 85-699, title III, §367, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-664.)

§ 689q. Authorization of appropriations**(a) In general**

There are authorized to be appropriated for fiscal years 2001 through 2006, to remain available until expended, the following sums:

(1) Such subsidy budget authority as may be necessary to guarantee \$150,000,000 of debentures under this part.

(2) \$30,000,000 to make grants under this part.

(b) Funds collected for examinations

Funds deposited under section 689k(c)(2) of this title are authorized to be appropriated only for the costs of examinations under section 689k of this title and for the costs of other oversight activities with respect to the program established under this part.

(Pub. L. 85-699, title III, §368, as added Pub. L. 106-554, §1(a)(8) [§1(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-664.)

¹ So in original. Probably should be followed by “to”.

PART C—RENEWABLE FUEL CAPITAL INVESTMENT
PILOT PROGRAM

§ 690. Definitions

In this part:

(1) Operational assistance

The term “operational assistance” means management, marketing, and other technical assistance that assists a small business concern with business development.

(2) Participation agreement

The term “participation agreement” means an agreement, between the Administrator and a company granted final approval under section 690c(e) of this title, that—

(A) details the operating plan and investment criteria of the company; and

(B) requires the company to make investments in smaller enterprises primarily engaged in researching, manufacturing, developing, producing, or bringing to market goods, products, or services that generate or support the production of renewable energy.

(3) Renewable energy

The term “renewable energy” means energy derived from resources that are regenerative or that cannot be depleted, including solar, wind, ethanol, and biodiesel fuels.

(4) Renewable Fuel Capital Investment company

The term “Renewable Fuel Capital Investment company” means a company—

(A) that—

(i) has been granted final approval by the Administrator under section 690c(e) of this title; and

(ii) has entered into a participation agreement with the Administrator; or

(B) that has received conditional approval under section 690c(c) of this title.

(5) State

The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(6) Venture capital

The term “venture capital” means capital in the form of equity capital investments, as that term is defined in section 683(g)(4) of this title.

(Pub. L. 85-699, title III, § 381, as added Pub. L. 110-140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1774.)

EFFECTIVE DATE

Part effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110-140, set out as a note under section 1824 of Title 2, The Congress.

§ 690a. Purposes

The purposes of the Renewable Fuel Capital Investment Program established under this part are—

(1) to promote the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy by encouraging venture capital investments in smaller enterprises primarily engaged¹ such activities; and

(2) to establish a venture capital program, with the mission of addressing the unmet equity investment needs of smaller enterprises engaged in researching, developing, manufacturing, producing, and bringing to market goods, products, or services that generate or support the production of renewable energy, to be administered by the Administrator—

(A) to enter into participation agreements with Renewable Fuel Capital Investment companies;

(B) to guarantee debentures of Renewable Fuel Capital Investment companies to enable each such company to make venture capital investments in smaller enterprises engaged in the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy; and

(C) to make grants to Renewable Fuel Investment Capital companies, and to other entities, for the purpose of providing operational assistance to smaller enterprises financed, or expected to be financed, by such companies.

(Pub. L. 85-699, title III, § 382, as added Pub. L. 110-140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1775.)

§ 690b. Establishment

The Administrator shall establish a Renewable Fuel Capital Investment Program, under which the Administrator may—

(1) enter into participation agreements for the purposes described in section 690a of this title; and

(2) guarantee the debentures issued by Renewable Fuel Capital Investment companies as provided in section 690d of this title.

(Pub. L. 85-699, title III, § 383, as added Pub. L. 110-140, title XII, § 1207, Dec. 19, 2007, 121 Stat. 1776.)

§ 690c. Selection of Renewable Fuel Capital Investment companies

(a) Eligibility

A company is eligible to apply to be designated as a Renewable Fuel Capital Investment company if the company—

(1) is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity;

(2) has a management team with experience in alternative energy financing or relevant venture capital financing; and

(3) has a primary objective of investment in smaller enterprises that research, manufacture, develop, produce, or bring to market goods, products, or services that generate or support the production of renewable energy.

¹ So in original. Probably should be followed by “in”.

(b) Application

A company desiring to be designated as a Renewable Fuel Capital Investment company shall submit an application to the Administrator that includes—

(1) a business plan describing how the company intends to make successful venture capital investments in smaller enterprises primarily engaged in the research, manufacture, development, production, or bringing to market of goods, products, or services that generate or support the production of renewable energy;

(2) information regarding the relevant venture capital qualifications and general reputation of the management of the company;

(3) a description of how the company intends to seek to address the unmet capital needs of the smaller enterprises served;

(4) a proposal describing how the company intends to use the grant funds provided under this part to provide operational assistance to smaller enterprises financed by the company, including information regarding whether the company has employees with appropriate professional licenses or will contract with another entity when the services of such an individual are necessary;

(5) with respect to binding commitments to be made to the company under this part, an estimate of the ratio of cash to in-kind contributions;

(6) a description of whether and to what extent the company meets the criteria under subsection (c)(2) and the objectives of the program established under this part;

(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the business plan of the company; and

(8) such other information as the Administrator may require.

(c) Conditional approval**(1) In general**

From among companies submitting applications under subsection (b), the Administrator shall conditionally approve companies to operate as Renewable Fuel Capital Investment companies.

(2) Selection criteria

In conditionally approving companies under paragraph (1), the Administrator shall consider—

(A) the likelihood that the company will meet the goal of its business plan;

(B) the experience and background of the management team of the company;

(C) the need for venture capital investments in the geographic areas in which the company intends to invest;

(D) the extent to which the company will concentrate its activities on serving the geographic areas in which it intends to invest;

(E) the likelihood that the company will be able to satisfy the conditions under subsection (d);

(F) the extent to which the activities proposed by the company will expand economic

opportunities in the geographic areas in which the company intends to invest;

(G) the strength of the proposal by the company to provide operational assistance under this part as the proposal relates to the ability of the company to meet applicable cash requirements and properly use in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by employees or contractors; and

(H) any other factor determined appropriate by the Administrator.

(3) Nationwide distribution

From among companies submitting applications under subsection (b), the Administrator shall consider the selection criteria under paragraph (2) and shall, to the maximum extent practicable, approve at least one company from each geographic region of the Administration.

(d) Requirements to be met for final approval**(1) In general**

The Administrator shall grant each conditionally approved company 2 years to satisfy the requirements of this subsection.

(2) Capital requirement

Each conditionally approved company shall raise not less than \$3,000,000 of private capital or binding capital commitments from 1 or more investors (which shall not be departments or agencies of the Federal Government) who meet criteria established by the Administrator.

(3) Nonadministration resources for operational assistance**(A) In general**

In order to provide operational assistance to smaller enterprises expected to be financed by the company, each conditionally approved company shall have binding commitments (for contribution in cash or in-kind)—

(i) from sources other than the Administration that meet criteria established by the Administrator; and

(ii) payable or available over a multiyear period determined appropriate by the Administrator (not to exceed 10 years).

(B) Exception

The Administrator may, in the discretion of the Administrator and based upon a showing of special circumstances and good cause, consider an applicant to have satisfied the requirements of subparagraph (A) if the applicant has—

(i) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under subparagraph (A); and

(ii) binding commitments in an amount equal to not less than 20 percent of the total amount required under paragraph¹ (A).

¹ So in original. Probably should be "subparagraph".

(C) Limitation

The total amount of a² in-kind contributions by a company shall be not more than 50 percent of the total contributions by a company.

(e) Final approval; designation

The Administrator shall, with respect to each applicant conditionally approved under subsection (c)—

(1) grant final approval to the applicant to operate as a Renewable Fuel Capital Investment company under this part and designate the applicant as such a company, if the applicant—

(A) satisfies the requirements of subsection (d) on or before the expiration of the time period described in that subsection; and

(B) enters into a participation agreement with the Administrator; or

(2) if the applicant fails to satisfy the requirements of subsection (d) on or before the expiration of the time period described in paragraph (1) of that subsection, revoke the conditional approval granted under that subsection.

(Pub. L. 85-699, title III, §384, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1776.)

§ 690d. Debentures**(a) In general**

The Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by any Renewable Fuel Capital Investment company.

(b) Terms and conditions

The Administrator may make guarantees under this section on such terms and conditions as it determines appropriate, except that—

(1) the term of any debenture guaranteed under this section shall not exceed 15 years; and

(2) a debenture guaranteed under this section—

(A) shall carry no front-end or annual fees;

(B) shall be issued at a discount;

(C) shall require no interest payments during the 5-year period beginning on the date the debenture is issued;

(D) shall be prepayable without penalty after the end of the 1-year period beginning on the date the debenture is issued; and

(E) shall require semiannual interest payments after the period described in subparagraph (C).

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this part.

(d) Maximum guarantee**(1) In general**

Under this section, the Administrator may guarantee the debentures issued by a Renew-

able Fuel Capital Investment company only to the extent that the total face amount of outstanding guaranteed debentures of such company does not exceed 150 percent of the private capital of the company, as determined by the Administrator.

(2) Treatment of certain Federal funds

For the purposes of paragraph (1), private capital shall include capital that is considered to be Federal funds, if such capital is contributed by an investor other than a department or agency of the Federal Government.

(Pub. L. 85-699, title III, §385, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1778.)

§ 690e. Issuance and guarantee of trust certificates**(a) Issuance**

The Administrator may issue trust certificates representing ownership of all or a fractional part of debentures issued by a Renewable Fuel Capital Investment company and guaranteed by the Administrator under this part, if such certificates are based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) Guarantee**(1) In general**

The Administrator may, under such terms and conditions as it determines appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or its agents for purposes of this section.

(2) Limitation

Each guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) Prepayment or default

If a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee. At any time during its term, a trust certificate may be called for redemption due to prepayment or default of all debentures.

(c) Full faith and credit of the United States

The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or its agents under this section.

(d) Fees

The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but any agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

² So in original. The article probably should not appear.

(e) Subrogation and ownership rights**(1) Subrogation**

If the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(2) Ownership rights

No Federal, State, or local law shall preclude or limit the exercise by the Administrator of its ownership rights in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) Management and administration**(1) Registration**

The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) Contracting of functions**(A) In general**

The Administrator may contract with an agent or agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section, including, not withstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under this part; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) Fidelity bond or insurance requirement

Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) Regulation of brokers and dealers

The Administrator may regulate brokers and dealers in trust certificates issued under this section.

(4) Electronic registration

Nothing in this subsection may be construed to prohibit the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

(Pub. L. 85-699, title III, §386, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1779.)

§ 690f. Fees**(a) In general**

Except as provided in section 690e(d) of this title, the Administrator may charge such fees as it determines appropriate with respect to any guarantee or grant issued under this part, in an amount established annually by the Administrator, as necessary to reduce to zero the cost (as defined in section 661a of title 2) to the Administration of purchasing and guaranteeing de-

bentures under this part, which amounts shall be paid to and retained by the Administration.

(b) Offset

The Administrator may, as provided by section 690g of this title, offset fees charged and collected under subsection (a).

(Pub. L. 85-699, title III, §387, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1780.)

§ 690g. Fee contribution**(a) In general**

To the extent that amounts are made available to the Administrator for the purpose of fee contributions, the Administrator shall contribute to fees paid by the Renewable Fuel Capital Investment companies under section 690f of this title.

(b) Annual adjustment

Each fee contribution under subsection (a) shall be effective for 1 fiscal year and shall be adjusted as necessary for each fiscal year thereafter to ensure that amounts under subsection (a) are fully used. The fee contribution for a fiscal year shall be based on the outstanding commitments made and the guarantees and grants that the Administrator projects will be made during that fiscal year, given the program level authorized by law for that fiscal year and any other factors that the Administrator determines appropriate.

(Pub. L. 85-699, title III, §388, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1780.)

§ 690h. Operational assistance grants**(a) In general****(1) Authority**

The Administrator may make grants to Renewable Fuel Capital Investment companies to provide operational assistance to smaller enterprises financed, or expected to be financed, by such companies or other entities.

(2) Terms

A grant under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) Grant amount

The amount of a grant made under this subsection to a Renewable Fuel Capital Investment company shall be equal to the lesser of—

(A) 10 percent of the resources (in cash or in-kind) raised by the company under section 690c(d)(2) of this title; or

(B) \$1,000,000.

(4) Pro rata reductions

If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (3), the Administrator shall make pro rata reductions in the amounts otherwise payable to each company and entity under such paragraph.

(5) Grants to conditionally approved companies

(A) In general

Subject to subparagraphs (B) and (C), upon the request of a company conditionally approved under section 690c(c) of this title, the Administrator shall make a grant to the company under this subsection.

(B) Repayment by companies not approved

If a company receives a grant under this paragraph and does not enter into a participation agreement for final approval, the company shall, subject to controlling Federal law, repay the amount of the grant to the Administrator.

(C) Deduction of grant to approved company

If a company receives a grant under this paragraph and receives final approval under section 690c(e) of this title, the Administrator shall deduct the amount of the grant from the total grant amount the company receives for operational assistance.

(D) Amount of grant

No company may receive a grant of more than \$100,000 under this paragraph.

(b) Supplemental grants

(1) In general

The Administrator may make supplemental grants to Renewable Fuel Capital Investment companies and to other entities, as authorized by this part, under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the companies.

(2) Matching requirement

The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide from resources (in a¹ cash or in kind), other than² those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) Limitation

None of the assistance made available under this section may be used for any overhead or general and administrative expense of a Renewable Fuel Capital Investment company.

(Pub. L. 85-699, title III, §389, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1781.)

§ 690i. Bank participation

(a) In general

Except as provided in subsection (b), any national bank, any member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) any insured bank that is not a member of such system, may invest in any Renewable Fuel Capital Investment company, or in any entity established to invest sole-

ly in Renewable Fuel Capital Investment companies.

(b) Limitation

No bank described in subsection (a) may make investments described in such subsection that are greater than 5 percent of the capital and surplus of the bank.

(Pub. L. 85-699, title III, §390, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1782.)

§ 690j. Federal Financing Bank

Notwithstanding section 687k of this title, the Federal Financing Bank may acquire a debenture issued by a Renewable Fuel Capital Investment company under this part.

(Pub. L. 85-699, title III, §391, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1782.)

§ 690k. Reporting requirement

Each Renewable Fuel Capital Investment company that participates in the program established under this part shall provide to the Administrator such information as the Administrator may require, including—

(1) information related to the measurement criteria that the company proposed in its program application; and

(2) in each case in which the company makes, under this part, an investment in, or a loan or a grant to, a business that is not primarily engaged in the research, development, manufacture, or bringing to market or¹ renewable energy sources, a report on the nature, origin, and revenues of the business in which investments are made.

(Pub. L. 85-699, title III, §392, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1782.)

§ 690l. Examinations

(a) In general

Each Renewable Fuel Capital Investment company that participates in the program established under this part shall be subject to examinations made at the direction of the Investment Division of the Administration in accordance with this section.

(b) Assistance of private sector entities

Examinations under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such examinations.

(c) Costs

(1) Assessment

(A) In general

The Administrator may assess the cost of examinations under this section, including compensation of the examiners, against the company examined.

(B) Payment

Any company against which the Administrator assesses costs under this paragraph shall pay such costs.

¹ So in original. The article probably should not appear.

² So in original. Probably should be “than”.

¹ So in original. Probably should be “of”.

(2) Deposit of funds

Funds collected under this section shall be deposited in the account for salaries and expenses of the Administration.

(Pub. L. 85-699, title III, §393, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1782.)

§ 690m. Miscellaneous

To the extent such procedures are not inconsistent with the requirements of this part, the Administrator may take such action as set forth in sections 687a, 687c, 687d, and 687f of this title and an officer, director, employee, agent, or other participant in the management or conduct of the affairs of a Renewable Fuel Capital Investment company shall be subject to the requirements of such sections.

(Pub. L. 85-699, title III, §394, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

§ 690n. Removal or suspension of directors or officers

Using the procedures for removing or suspending a director or an officer of a licensee set forth in section 687e of this title (to the extent such procedures are not inconsistent with the requirements of this part), the Administrator may remove or suspend any director or officer of any Renewable Fuel Capital Investment company.

(Pub. L. 85-699, title III, §395, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

§ 690o. Regulations

The Administrator may issue such regulations as the Administrator determines necessary to carry out the provisions of this part in accordance with its purposes.

(Pub. L. 85-699, title III, §396, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

§ 690p. Authorizations of appropriations**(a) In general**

Subject to the availability of appropriations, the Administrator is authorized to make \$15,000,000 in operational assistance grants under section 690h of this title for each of fiscal years 2008 and 2009.

(b) Funds collected for examinations

Funds deposited under section 690l(c)(2) of this title are authorized to be appropriated only for the costs of examinations under section 690l of this title and for the costs of other oversight activities with respect to the program established under this part.

(Pub. L. 85-699, title III, §397, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

§ 690q. Termination

The program under this part shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the program under this part.

(Pub. L. 85-699, title III, §398, as added Pub. L. 110-140, title XII, §1207, Dec. 19, 2007, 121 Stat. 1783.)

SUBCHAPTER IV—STATE CHARTERED INVESTMENT COMPANIES AND STATE DEVELOPMENT COMPANIES**§ 691. Repealed. Pub. L. 87-341, §11(f), Oct. 3, 1961, 75 Stat. 756**

Section, Pub. L. 85-699, title IV, §401, Aug. 21, 1958, 72 Stat. 696, related to conversion of any investment company, or any State development company, into a small business investment company.

SUBCHAPTER IV-A—GUARANTEES**PART A—COMMERCIAL OR INDUSTRIAL LEASE AND QUALIFIED CONTRACT GUARANTEES****§ 692. Authority of Administration to guarantee payment of rentals by small business concerns under leases of commercial and industrial property****(a) Nonavailability of guarantees from other sources; participation with qualified sureties**

The Administration may, whenever it determines such action to be necessary or desirable, and upon such terms and conditions as it may prescribe, guarantee the payment of rentals under leases of commercial and industrial property entered into by small business concerns to enable such concerns to obtain such leases. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No guarantee shall be issued by the Administration (A) if a guarantee meeting the requirements of the applicant is otherwise available on reasonable terms, and (B) unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the lease.

(2) The Administration shall, to the greatest extent practicable, exercise the powers conferred by this section in cooperation with qualified surety or other companies on a participation basis.

(b) Uniform annual fee; processing fees

The Administration shall fix a uniform annual fee for its share of any guarantee under this section which shall be payable in advance at such time as may be prescribed by the Administrator. The amount of any such fee shall be determined in accordance with sound actuarial practices and procedures, to the extent practicable, but in no case shall such amount exceed, on the Administration's share of any guarantee made under this part, 2½ per centum per annum of the minimum annual guaranteed rental payable under any guaranteed lease: *Provided*, That the Administration shall fix the lowest fee that experience under the program established hereby has shown to be justified. The Administration